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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1891.

No. 250.

THE EPISCOPAL CITY MISSION AND CHURCH HOME,
MESERVE, APPELLANTS,

vs.

LUCY T. BROWN AND JOHN B. [illegible]

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 27, 1891.

(14,779.)

(14,779.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 250.

THE EPISCOPAL CITY MISSION AND GEORGE W. MESERVE, APPELLANTS,

vs.

LUCY T. BROWN AND JOHN B. BROWN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Thursday, the thirty-first day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the third day of December, 1886, came the complainants, by their solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bond for costs and bill of complaint in said entitled cause; which said bond and bill are respectively in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, December Term, A. D. 1886.

THE EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN *et al.* } In Chancery.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against me property for any costs taxed against it. Dated this 3 day of December, A. D. 1886.

GEORGE BURRY.

(Endorsed:) Filed Dec. 3, A. D. 1886. Wm. H. Bradley, clerk.

3 *Bill of Complaint.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, *Northern District of Illinois*, } *ss*:

To the judges of the circuit court of the United States for the northern district of Illinois:

The Episcopal City Mission, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and George W. Meserve, of Charlestown, in the said Commonwealth, a citizen of the Commonwealth of Massachusetts, bring this their bill against Lucy T. Brown and John B. Brown, of Chicago and citizens of the State of Illinois; and thereupon your orators complain and say—

That your orator Meserve conveyed to your orator The Episcopal City Mission two lots by mortgaged deeds, each dated the first day of March, 1877, each given to secure the sum of $19,500 and interest thereon, as will more particularly appear from the mortgages, copies of which are hereto attached as a part hereof and marked respectively Exhibit "A" and Exhibit "B;" that on the same day your orator Meserve bargained and sold said lots to the said Lucy T. Brown, and by deed, in consideration of $30,000, conveyed one of said lots (lot three) to Lucy T. Brown, wife of the said John B. Brown, subject, however, to the mortgage placed
4 thereon as aforesaid, in which deed the said Lucy T. Brown assumed and agreed to pay the said mortgage and to protect and save harmless your orator Meserve therefrom, and by another deed of even date with the said mortgages, in consideration of $30,000, also conveyed another of said lots (lot four) to the said Lucy T. Brown, expressly subject, however, to the mortgage placed thereon as aforesaid, and in the said deed the said Lucy T. Brown assumed and agreed to pay the said mortgage on lot four and to protect and save harmless your orator Meserve therefrom; that copies of the said deeds are hereto attached as a part hereof and marked respectively Exhibit "A 1" and Exhibit "B 1."

That afterwards the said John B. Brown executed to your orator Meserve a penal bond, a copy of which is hereto attached as a part hereof, marked Exhibit "C," in the penal sum of $10,000, conditioned as follows: "Whereas the said George W. Meserve did, by deed dated March 1st, 1877, convey unto Lucy T. Brown two separate estates on Purchase street, Boston, Mass., each estate being subject to a mortgage for $19,500 at 6½ per cent. interest, to the Episcopal city mission of even date with said deeds, which said mortgage and interest thereon the said Lucy T. Brown assumed and agreed to pay and hold the said Meserve harmless therefrom: Now, therefore, if the said Lucy T. Brown shall perform the obligations of said deeds therein expressed and save the said Meserve harm-

less, then this obligation shall be void; otherwise it shall be and remain in full force and virtue, only to the extent, however, that the said Meserve suffers harm."

5 That default having been made in the payment of the several sums secured by the said mortgages, your orator The Episcopal City Mission caused a foreclosure of the said premises to be made, under and in pursuance of the powers contained in the respective mortgages, on the 12th day of March, A. D. 1884; that the proceeds of the sales of the said premises were not sufficient to pay the moneys due on the said mortgages, and the resulting deficiency on lot three was $10,574.71 and on lot four $10,074.71, which sums, with interest thereon at the rate of six and one-half (6½) per cent. per annum, still remain due and owing to your orator The Episcopal City Mission.

That your orator Meserve is utterly irresponsible, financially, and insolvent and unable to pay the amounts so remaining due or any part thereof.

That your orator The Episcopal City Mission has frequently applied, both on its own behalf and for and on behalf of your orator Meserve, to the said John B. Brown and Lucy T. Brown to pay the moneys so remaining due to your orator The Episcopal City Mission under the mortgages so assumed by the Browns as aforesaid, and your orators well hoped that the said John B. Brown and Lucy T. Brown would have complied with the reasonable requests of your orators, as in justice and equity they ought to have done; but the said John B. Brown and Lucy T. Brown absolutely refuse to comply with the reasonable requests of your orators, and the said defendants pretend that your orator Meserve is indebted to the said John B. Brown in a greater amount than the indebtedness aforesaid; that he, the said John B. Brown, is entitled to

6 offset the moneys so pretended to be due from your orator Meserve against the moneys so due to your orator The Episcopal City Mission on the mortgages aforesaid, and pretend also that your orator Meserve has released and discharged the said John B. Brown from the said indebtedness, whereas your orators charge the contrary to be true and that your orator Meserve is not indebted to the said John B. Brown in any amount whatever, and that if your orator Meserve were so indebted the said John B. Brown is not entitled to offset such indebtedness against the amounts due your orator The Episcopal City Mission on the mortgages aforesaid, and that your orator Meserve has not in any way released or discharged the said John B. Brown from said indebtedness or any part thereof.

All which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orators in the premises.

In tender consideration whereof and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are relievable only in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said John B. Brown and Lucy T.

Brown may, to the utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make (but not under oath, answers under oath being hereby waived) to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and
7 every of them distinctly interrogated thereto, and that an account may be taken under the direction of this honorable court of the amount due your orator The Episcopal City Mission under the said mortgages, and that your orator The Episcopal City Mission may be subrogated to all the rights of your orator Meserve in the premises, and that the said John B. Brown and Lucy T. Brown may be decreed to pay the same unto your orator The Episcopal City Mission, and that your orator may have such other, further, or different relief in the premises as the nature of the case may require and to your honors shall seem meet, may it please your honors to grant unto your orators a writ of subpœna, to be directed to the said John B. Brown and Lucy T. Brown, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree herein as to your honors shall seem meet.

And your orators will ever pray, etc.

THE EPISCOPAL CITY MISSION,
By GEORGE BURRY, *Its Solicitor.*

WILLIAM BURRY, *Of Counsel.*

8 Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in consideration of nineteen thousand, five hundred dollars paid by the Episcopal city mission, a corporation established under the laws of the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said corporation a certain lot of land lying on Purchase street in said Boston, and bounded and described as follows viz: Northwesterly on said Purchase street, twenty-four $\frac{86}{100}$ feet; southwesterly on other land of said corporation, on a straight line running in part through the centre of the brick partition wall and in part in the same course sixty-one $\frac{40}{100}$ feet to the center of a four-foot passageway; southeasterly on the center line of said passageway twenty-five $\frac{6}{100}$ feet, and northwesterly on other land of grant or on a straight line running to and through the center of the brick partition wall sixty-one $\frac{59}{100}$ feet. Containing fifteen hundred and thirty-five (1,535) square feet, and being lot number three on a plan of S. C. Ellis, dated 24 October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2 October, 1876, and recorded with Suffolk deeds Lib. 1354 fol. 163, with all the rights and easements thereto belonging and especially with all rights in said four-foot passageway leading

northeasterly to a five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

Also, with all rights of light and air and passage in a strip
8½ of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises, being lot number four on said plan, and said strip extends the whole width of said lot number four.

It is hereby provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding and any other usual rights forever.

Being a part of the premises conveyed to me by deed of said corporation of even date herewith and this mortgage is delivered to said corporation simultaneously with the delivery of said deed to me, to secure a part of the purchase-money. Subject also to the rights and easements set forth in said deed to me, and in my mortgage of the adjoining estate to said corporation of even date herewith.

To have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Episcopal city mission and its assigns, to its and their use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators covenant with the grantee and its assigns that I am lawfully seized in fee-simple of the granted premises, and that they are free from all encumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will, and my heirs executors and administrators shall warrant and defend the same to the grantee and its assigns forever against the lawful claims and demands of all persons, except as aforesaid.

9 Provided nevertheless, that if I or my heirs, executors, administrators or assigns, shall pay unto the grantee or its assigns the sum of nineteen thousand, five hundred dollars in three years from this date, with interest semi-annually at the rate of six and one-half per cent. per annum, and until such payment shall pay all taxes and assessments on the granted premises, shall keep the buildings thereon insured against fire in a sum not less than six thousand dollars, for the benefit of the grantee and its assigns at such insurance as it or they shall approve, and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained, then this deed, as also one note of even date herewith, signed by me whereby I promise to pay to the grantor or order the said sum and interest at the time aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition, the grantee or its assigns may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release thereof, together with all improvements that may be thereon, at public auction in said city of Boston, first publishing a notice of the time and place of sale, once each week for three successive weeks in some one newspaper published in said city of Boston and may convey the same by proper deed or

deeds to the purchaser or purchasers absolutely and in fee-simple, and such sale shall forever bar me and all persons claiming under me from all right and interest in the granted premises, whether at law or in equity. And out of the moneys arising from such sale, the grantee or its assigns shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs charges and expenses incurred or sustained by reason of any failure or default on the part of me or my representatives to perform and fulfill the condition of this deed, rendering the surplus if any, to me or my heirs or assigns.

And it is agreed that the grantee or its assigns, or any person or persons in its or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase-money, and that until default in the performance of the condition of this deed, I, and my heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof. And I do hereby for myself and my heirs, and assigns further covenant with the grantee and its assigns, that on each sale I, and they will upon request execute and deliver such further deeds and instruments as may be necessary or proper to confirm said sale and to vest the title to the premises sold in the purchaser thereof.

And for the consideration aforesaid, I, Esther M. Meserve, wife of said George W. Meserve, do hereby release unto the grantee, all right of or to both dower and homestead in the granted premises.

In witness whereof, we, the said George W. Meserve, and Esther M. Meserve, hereto set our hands and seals this first day of March, in the year one thousand eight hundred and seventy-seven. The word "east," inserted on the first page before signing.

GEORGE W. MESERVE. [SEAL.]
ESTHER M. MESERVE. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM HEDGE, to G. W. M.
JOHN H. ROLFE, witness to Esther M. Meserve.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

MARCH 20TH, 1877.

Then personally appeared the within-named George W. Meserve and acknowledged the foregoing instrument to be his free act and deed before me—

WILLIAM HEDGE,
Justice of the Peace.

BOSTON, *March 20th*, 1877—3 h. 20 m. p. m.
Received and entered with Suffolk deeds, Libro 1368, folio 147.
Attest: THOS. F. TEMPLE, *Register.*

12 "A 1."

Meserve to Brown.

Lib. 1368, fol. 150.

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, in consideration of thirty thousand dollars to me paid by Lucy T. Brown, wife of John B. Brown, of Chicago, Cook county, Commonwealth of Illinois, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Lucy T. Brown all that lot of land on Purchase street in said Boston with a new brick store thereon bounded and described as follows viz: Northwesterly on said Purchase street twenty-four and $\frac{86}{100}$ (24.86) feet southwesterly on land of Episcopal city mission on a straight line running in part through the center of the brick partition wall, and in part in the same course sixty-one and $\frac{40}{100}$ (61.40) feet to the center of a four-foot passageway southeasterly on the center line of said passageway twenty-five and $\frac{6}{100}$ ($25\frac{6}{100}$) feet and northeasterly on other land of said Episcopal city mission on a straight line running to and through the center of the brick partition wall, sixty-one and $\frac{50}{100}$ (61.50) feet; containing fifteen hundred and thirty-five (1,535) square feet, and being lot number three on a plan of S. C. Ellis, dated October 24th, 1876, and recorded with the deed of the said Episcopal city mission to the said George W. Meserve, dated October 2, 1876, and recorded with Suffolk deeds
13 Lib. 1354 fol. 163 together with and also subject to all the rights and easements contained in the deed of said premises to me, of even date herewith by the Episcopal city mission. And being the same premises therein conveyed to me, and this conveyance is now made subject to a mortgage on said store for nineteen thousand, five hundred ($19,500) dollars made by me to said Episcopal city mission which mortgage with all interest thereon the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom. Subject also to the easements created in and by said mortgage in and upon the said lot.

To have and to hold the granted premises with all the privileges and appurtenances thereto belonging to the said Lucy T. Brown and her heirs and assigns to their own use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators covenant with the said grantee and her heirs and assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and her heirs and assigns forever against the lawful claims and demands of all persons, ex-

cept as aforesaid. And for the consideration aforesaid, I, Esther M. Meserve wife of the said George W. Meserve do hereby release unto the grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness, whereof we, the said George W. Meserve and Esther M. Meserve hereunto set our hands and seals this first day of March, in the year one thousand eight hundred and seventy-seven.

14 GEORGE W. MESERVE.
ESTHER M. MESERVE.

And each a seal.

The word "city" was interlined on first page before signing.

Signed and sealed in presence of—
WILLIAM S. LELAND.
CARRIE R. NICKERSON.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

MARCH 20TH, 1877.

Then personally appeared the above-named George W. Meserve and acknowledged the foregoing instruments to be *my* free act and deed before me—

WILLIAM S. LELAND,
Justice of the Peace.

MARCH 20TH, 1877, at three o'clock and twenty minutes p.m.
Received, entered, and examined.
Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the record of deeds for the county of Suffolk, Lib. 1368, fol. 150.
Attest: THOS. F. TEMPLE, *Reg.*

15 "B."

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts in consideration of nineteen thousand, five hundred dollars, paid by the Episcopal city mission, a corporation established under the laws of the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said corporation, a certain lot of land lying on Purchase street in said Boston and bounded and described as follows, viz:

Northwesterly on said Purchase street, twenty-four $\frac{16}{100}$ feet, southwesterly, on other land of said grantor on a straight line running in part through*t* the center of the brick partition wall and in part in the same course sixty-one $\frac{59}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-four $\frac{19}{100}$ feet, and northeasterly on other land of said corporation on a straight line running to and through the center of the brick

partition wall sixty-one $\frac{77}{100}$ feet, containing fourteen hundred ninety-one (1,491) square feet, and being lot number four on a plan of S. C. Ellis, dated 24th October 1876, and recorded with the deed of said corporation to said Meserve, dated 2nd October, 1876, and recorded with Suffolk deeds, Lib. 1354, fol. 163 with all the rights and easements thereto belonging and especially with all the rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

16 It is hereby provided that the brick walls on the two sides of the granted premises shall be party walls in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding and any other usual rights forever.

Being a part of the premises conveyed to me by deed of said corporation of even date herewith, and this mortgage is delivered to said corporation simultaneously with the delivery of said deed to me, to secure a part of the purchase-money. Subject also to the rights and easements set forth in said deed to me, and in my mortgage of the adjoining estate to said corporation of even date herewith.

To have and to hold, the granted premises with all the privileges and appurtenances thereto belonging, to the said Episcopal city mission, and its assigns to their use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators covenant with the grantee and its assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the grantee and its assigns forever against the lawful claims and demands of all persons, except as aforesaid.

Provided nevertheless, that if I or my heirs, executors administrators or assigns, shall pay unto the grantee or its assigns the sum of nineteen thousand, five hundred dollars in three years from this date with interest semi-annually at the rate of six and one-half per cent. per annum, and until such payment shall pay all taxes and assessments on the granted premises, shall keep the buildings

17 thereon insured against fire in a sum not less than six thousand dollars for the benefit of the grantee and its assigns at such insurance office as it or they shall approve, and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenants herein contained—then this deed, as also one note of even date herewith, signed by me whereby I promise to pay to the grantee or order the said sum and interest at the times aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition the grantee or its assigns may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all

improvements that may be thereon, at public auction in said city of Boston, first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said city of Boston and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple, and such sale shall forever bar me and all persons claiming under me from all right and interest in the granted premises whether at law or in equity. And out of the money arising from such sale the grantee or its assigns shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable including all costs, charges and expenses incurred or sustained by reason of any failure or default of me or my representatives to perform or fulfill the condition of this deed, rendering the surplus if any, to me or my heirs or assigns.

And it is agreed that the grantee or its assigns, or any per-
18 son or persons in its or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase-money, and that, until default in the performance in the condition of this deed, I and my heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof. And I do hereby for myself and my heirs and assigns further covenant with the grantee and its assigns that on such sale, I, and they will upon request, execute and deliver such further deeds and instruments as may be necessary or proper to confirm said sale and to vest the title to the premises sold in the purchaser thereof. And for the consideration aforesaid, I, Esther M. Meserve, wife of said George W. Meserve, do hereby release unto the grantee all right of or to both dower and homestead in the granted premises.

In witness whereof, we, the said George W. Meserve and Esther M. Meserve hereto set our hands and seals this first day of March, in the year one thousand eight hundred and seventy-seven.

GEORGE W. MESERVE. [SEAL.]
ESTHER M. MESERVE. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM HEDGE, to G. W. M.
JOHN H. ROLFE, witness to Esther M. Meserve.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

MARCH 20TH, 1877.

Then personally appeared the within-named George W. Meserve and acknowledged the foregoing instrument to be his free act and deed before me—

WILLIAM HEDGE,
Justice of the Peace.

BOSTON, *March 20th*, 1877—3 h. 20 m. p. m.
Received and entered with Suffolk deeds, Libro 1368, folio 148.
Attest: THOS. F. TEMPLE, *Register.*

19 "B 1."

Meserve to Brown.

Lib. 1668, fol. 151.

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts in consideration of thirty thousand dollars, to me paid by Lucy T. Brown, wife of John B. Brown, of Chicago, Cook county, Commonwealth of Illinois, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Lucy T. Brown, all that lot of land on Purchase street in said Boston, with a new brick store thereon, bounded and described as follows viz: Northwesterly on said Purchase street, twenty-four and $\frac{16}{100}$ (24.16) feet, southwesterly on land of the Episcopal city mission on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one and $\frac{59}{100}$ (61.59) feet to the center of a four-foot passageway; southwesterly on the center line of said passageway, twenty-four and $\frac{19}{100}$ (24.19) feet, and northeasterly on other land of the said Episcopal city mission on a straight line running to and through the center of the brick partition wall sixty-one and $\frac{77}{100}$ (61.77) feet, containing fourteen hundred and ninety-one (1,491) square feet and being lot number four (4) on a plan of S. C. Ellis, dated 24th of October, 1876, and recorded with the deed of said Episcopal city mission to George W. Meserve, dated October 2nd, 1876, and recorded with Suffolk deeds, Libro 1354 fol. 163, together with and also subject to all the rights and easements contained in the deed of said premises to me of even date herewith by the Episcopal city mission and being the same premises therein conveyed to me, and this conveyance is now made subject to a mortgage on said store for nineteen thousand, five hundred dollars (19,500) made by me to said Episcopal city mission,
20 which mortgage with all interest thereon the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom. Subject also to the easements created in and by said mortgage in and upon the said lot. To have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Lucy T. Brown and her heirs and assigns to their own use and behoof forever. And I do hereby for myself and my heirs executors and administrators covenant with the said grantee and her heirs and assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and her heirs and assigns forever against the lawful claims and demands of all persons except as aforesaid. And for the consideration aforesaid, I, Esther M. Meserve,

wife of the said George W. Meserve, do hereby release unto the grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof we, the said George W. Meserve and Esther M. Meserve, hereunto set our hands and seals this first day of March in the year one thousand eight hundred and seventy-seven.

GEORGE W. MESERVE AND
ESTHER M. MESERVE.

And each a seal.

The words to the center of were interlined on first page before signing.

Signed — sealed in presence of—
WILLIAM S. LELAND.
CARRIE R. NICKERSON.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

MARCH 20TH, 1877.

Then personally appeared the above-named George W. Meserve and acknowledged the foregoing instrument to be his free
21 and voluntary act before me—

WILLIAM S. LELAND,
Justice of the Peace.

MARCH 20TH, 1877, at three o'clock and twenty minutes p. m.

Received, entered, and examined.
Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the record of deeds for the county of Suffolk, Lib. 1368, fol. 151.
Attest: THOS. F. TEMPLE, *Reg.*

"C."

Know all men by these presents, that I, John B. Brown, am holden and stand firmly bound unto George W. Meserve in the sum of ten thousand dollars to the payment of which to the said Meserve or his executors, administrators or assigns I hereby bind myself, my heirs, executors and administrators.

The condition of the obligation, is such, that whereas, the said George W. Meserve did by deeds dated March 1, 1877 convey unto Lucy T. Brown 2 separate estates on Purchase street, Boston, Mass., each estate being subject to a mortgage of $19,500, at 6½ per cent. interest to the Episcopal city mission of even date with said deeds, which said mortgage and interest thereon the said Lucy T. Brown, assumed and agreed to pay and hold the said Meserve harmless therefrom.

Now, therefore, if the said Lucy T. Brown shall perform the obligations of said deeds as therein expressed, and save the said Meserve

harmless then this obligation shall be void, otherwise, it shall
22 be and remain in full force and virtue, only to the extent however, that the said Meserve suffers harm.

In witness, whereof, I hereunto set my hand and seal this nineteenth day of March, A. D. 1877.

JOHN B. BROWN. [SEAL.]

Signed and sealed in presence of—
(S'g'd) P. L. CLARK.

(Endorsed:) Filed Dec. 3, 1886. Wm. H. Bradley, clerk.

Afterward, to wit, on the fourth day of December, 1886, came the defendants, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

23 *Appearance.*

In the Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

We hereby enter the appearance of Lucy T. Brown and John B. Brown, the above-named defendants, to the December term.

Chicago, 3rd December, 1886.

OSBORN, COHRS & LYNDE,
Solicitors for Defendants.

(Endorsed:) Filed Dec. 4, 1886. Wm. H. Bradley, clerk.

Afterward, to wit, on the third day of January, 1887, came Lucy T. Brown, by her solicitors, and filed in said clerk's office her answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

24 *Answer of Lucy T. Brown.*

United States Circuit Court, Northern District of Illinois.

EPISCOPAL CITY MISSION and GEORGE W. MESERVE, Complainants,
vs.
JOHN B. BROWN and LUCY T. BROWN, Defendants.

The answer of Lucy T. Brown, defendant, impleaded with said John B. Brown, to the bill of complaint of The Episcopal City Mission and George W. Meserve, complainants.

This defendant, saving unto herself all and all manner of exception to the many uncertainties, deficiencies, and errors of the said bill of complaint, for answer thereunto and to such parts

thereof as she is advised that it is material or necessary for her to make answer unto, answering, says that she has no knowledge as to whether the said complainant, Meserve, conveyed to the said complainant, The Episcopal City Mission, the said two lots by mortgage deeds dated the first day of March, 1877, each to secure the sum of $19,500 and interest thereon, as is alleged in said bill of complaint, of which deeds the said Exhibits "A" and "B" to said bill are alleged to be copies, and she therefore neither admits nor denies the allegations of the bill in that respect. She further says that she never knew of and never consented to any sale to her
25 by the said complainant, Meserve, of the said lots or either of them, and that she had no knowledge at the time and never consented to any conveyance to her from said Meserve of the said lot 3, which is alleged in the said bill of complaint to have been made to her by said Meserve by deed dated said first day of March, 1877, in consideration of $30,000, and that she had no knowledge at the time and never consented to any conveyance to her by said Meserve of said lot 4, as is also alleged therein to have been conveyed to her by deed dated the first of March, 1877, and that she never received from said Meserve such alleged deeds of conveyance and never authorized or empowered any one on her behalf to accept such deeds of conveyance and act for her in that regard and never received or accepted the same.

She, further answering, says that she never at any time assumed and agreed with the said Meserve to pay the said mortgages upon said lots 3 and 4 and to protect and save harmless said Meserve therefrom, and that she never knew of such agreement being made in her behalf, never authorized or empowered any one in her behalf to make the same, and never consented to such agreement, and as to whether the said Exhibits "A" and "B" are copies of said alleged deeds of conveyance to her from said Meserve she has no knowledge and can neither admit nor deny the allegations of the said bill of complaint in that regard.

Further answering, this defendant says that some time after the said first of March, 1877, she was informed by said defendant, John B. Brown, that he had purchased the said two lots from said Meserve and had taken from him deeds of conveyance therefor to
26 her, but that such conveyances were so made solely for his use and were so made to this defendant in accordance with some agreement or understanding with said Meserve; that this defendant never saw such deed or deeds of conveyance, never consented to the making thereof, never authorized them to be delivered to her, and never at any time had any knowledge of the alleged provisions thereof whereby the grantee assumed and agreed to pay said mortgages upon said lots held by said Episcopal city mission and to save said Meserve harmless therefrom, and never consented to or authorized such agreement or agreements or ratified the same.

Further answering, this defendant says that she has no knowledge of the several other matters and things alleged and stated in the said bill of complaint and can make no answer admitting or denying the same, but she calls for strict proof thereof.

Further answering, this defendant says that she is informed and believes the fact to be that the said two lots were conveyed by said Meserve to her at the request of said John B. Brown and solely and only for his use, under and in pursuance *to* a contract theretofore made by and between said John B. Brown and said Meserve, whereby it was agreed that said Meserve should purchase from said John B. Brown certain lands in Cook county, Illinois, which lands were then encumbered with several mortgages, and that Meserve should assume and pay such mortgages thereon and save said Brown harmless therefrom, and in full payment therefor said Meserve should convey to said Brown the two lots on Purchase street, Boston, which are the same premises described in said deeds of conveyance from Meserve to this defendant, and that said John B. Brown should assume and pay mortgages thereon or to be
27 put thereon in favor of said Episcopal city mission, to wit, for the same amounts as those which are Exhibits "A" and "B" to said bill of complaint, and that the sole consideration for the agreement of said John B. Brown to take conveyances of said Purchase-street lots and assume said mortgages thereon was the said agreement of said Meserve to receive conveyances of said Cook county lands and assume the said mortgages thereon.

That on or about the 14th day of March, 1877, said Brown made and delivered to said Meserve his deed of conveyance for said Cook county lands in compliance with said contract, and at that time he requested said Meserve to convey the Purchase-street lots to this defendant, but, as she avers, without her knowledge or consent, and said Meserve did so, but required said Brown to give him his bond to secure him from loss in the transaction, which bond is made an exhibit, marked "C," to said bill of complaint; that afterwards said Meserve failed to perform the covenant and obligation of the said deed to him from said Brown and his said agreement and failed to pay said mortgages on said Cook county lands, and that said Brown was obliged to pay and did pay the same and expended in so doing the sum of more than $20,000.00, and that there is now due and owing to said Brown from said Meserve for and on account of the moneys which he was required to pay out by reason of the default of said Meserve and the breach of his agreement and obligation a greater sum than is due and unpaid to said Episcopal city mission; and this defendant says that if she can be held and considered liable to said Meserve or to said Episcopal city mission through
28 said Meserve under the said covenants of said deeds of conveyance made to her at the instance of said Brown by said Meserve without her knowledge and consent and as part of the agreement and transaction between said Meserve and said Brown, then she should be allowed to recoup and set off against any such liability on her part to said Meserve or to said Episcopal city mission, claiming in the right of said Meserve, the sums of money that remain due and unpaid from said Meserve to said Brown under the said transaction.

And this defendant says that she is in no way indebted to the said complainant, The Episcopal City Mission, or the said com-

plainant, Meserve, and that she has never with her knowledge and consent been a party to the said alleged conveyances which purport to convey to her the said premises and to bind her to the payment of the said alleged mortgages, and that the said conveyances were not, nor was either of them, delivered to her or received by her or assented to by her in any way, and that the complainants are not, nor is either of them, entitled to any decree against her in respect thereto.

And now, having answered the said bill of complaint and the several matters and things therein alleged, she prays that she may be dismissed hence with her costs in this behalf most wrongfully sustained.

LUCY T. BROWN,
By OSBORN, COHRS & LYNDE,
Her Solicitors.

CHARLES M. OSBORN,
JOHN B. COHRS &
S. A. LYNDE,
Of Counsel.

(Endorsed:) Filed Jan'y 3, 1887. Wm. H. Bradley, clerk.

29 On the same day, to wit, on the third day of January, 1887, came John B. Brown, by his solicitors, and filed in said clerk's office his answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of John B. Brown.

United States Circuit Court, Northern District of Illinois.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE, Complainants,
vs.
LUCY T. BROWN and JOHN B. BROWN, Defendants.

The answer of John B. Brown, defendant, impleaded with Lucy T. Brown, to the bill of complaint of The Episcopal City Mission and George W. Meserve, complainants.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised that it is material or necessary for him to make answer to, answering, says—

That he admits that said Meserve conveyed to said Episcopal city mission said two lots by mortgage deeds, and that each thereof was dated the 1st day of March, 1877, and was given to secure the sum of $19,500 and interest thereon, and that said Exhibits "A" and "B" to said bill of complaint are copies of said mortgage deeds. Defend-

ant denies that the same day said Meserve bargained and sold said lots to said Lucy T. Brown, but he says that said Lucy T.
30 Brown is the wife of this defendant, and, as will be hereinafter more fully stated, said Meserve had, prior to said March 1st, 1877, entered into a contract with this defendant and thereby agreed, among other things, to sell and convey to this defendant the said lots, and that the said lots were bargained and sold by said Meserve to this defendant and not to said Lucy T. Brown, and that at the request of this defendant and without the knowledge or consent of said Lucy T. Brown the said two lots were conveyed by said Meserve by separate deeds of conveyance of the said date to said Lucy T. Brown; but this defendant says that said deeds of conveyance were so made and executed without the knowledge of said Lucy T. Brown and without her consent and solely at the request of this defendant and for his use and in pursuance and consideration of said contract between this defendant and said Meserve.

Defendant therefore denies that said Meserve conveyed by said deeds said lots to said Lucy T. Brown, and says that said deeds of conveyance were not known to or authorized by her and were never delivered to her or accepted by her.

Defendant admits that it is provided in said deeds of conveyance that each thereof is subject to the said mortgage to said Episcopal city mission on the lot thereby conveyed, and that it is stated in each of said deeds of conveyance that said Lucy T. Brown assumes and agrees to pay said mortgages and to protect and save harmless said Meserve therefrom, but defendant denies that said Lucy T. Brown ever assumed and agreed to pay said mortgages or to protect and save harmless said Meserve therefrom, and says that she had no knowledge of said deeds or of the provisions thereof and
31 never accepted the same or assented thereto, and that they were never delivered to her, and defendant admits that the said Exhibits "A" and "B" are true copies of said deeds of conveyance.

Defendant admits that afterwards this defendant executed to said Meserve the said penal bond described in said bill of complaint, and that said Exhibit "C" is a true copy thereof.

Defendant, further answering, says that he has no knowledge as to whether the said Episcopal city mission caused a foreclosure of said premises to be made under the said mortgages, as charged in said bill of complaint, or as to the proceeds of sales of said premises, or as to the alleged deficiencies resulting from such sales, or as to the sums of money due to said Episcopal city mission, and can neither admit nor deny the several allegations of the said bill of complaint in respect thereto, and he calls for strict proof of each thereof.

Defendant further says that he has no knowledge as to the financial condition of said Meserve and cannot make answer in that regard.

Further answering, this defendant says that prior to the time when said mortgages and deeds bear date, to wit, on or about the 6th day of January, 1877, the said Meserve and this defendant

made and entered into an agreement wherein it was agreed in substance that this defendant should sell to said Meserve and said Meserve should buy from this defendant certain lands situate in the county of Cook and State of Illinois, which lands were then encumbered with divers mortgages; and it was further agreed
32 that said Meserve should assume and pay the said mortgages on the said Cook county lands and should save and keep this defendant harmless therefrom, and this defendant on his part agreed to take from said Meserve in payment of said property in Cook county two lots on Purchase street, in Boston, upon which the said Meserve was then engaged in erecting certain buildings and which were in said contract described and being each subject to a mortgage for $19,500 to said Episcopal city mission, which mortgages this defendant agreed to assume and pay, which said two lots are the same premises described in said deeds of conveyance which are Exhibits "A 1" and "B 1" to the bill of complaint.

And defendant avers that the sole consideration for his said agreement to take and receive conveyances of said Purchase-street lots and assume said mortgages thereon was the said agreement by Meserve to take and receive a conveyance of said Cook county lands and assume and pay the said mortgages thereon.

Defendant further says that after the making of said contract and after the said first day of March, 1877, upon which day the said mortgage deeds to said mission and said conveyances which are exhibits to said bill of complaint bear date, to wit, on or about the 14th day of March, 1877, he executed and delivered in pursuance of said contract to said Meserve his deed of conveyance of the said lands and premises in Cook county, which premises, together with the encumbrances thereon, were described therein as follows:

Lots numbered 15 to 24, both inclusive, in block one, in Wright & Windett's subdivision of the northwest quarter (N. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of the southwest quarter (S. W. $\frac{1}{4}$)
33 of section nine (9), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian, situate corner of Wallace & 54th Sts., subject to a trust deed to D. K. Pearsons, trustee, dated April 18, 1874, to secure a note of the party of the first part for ($2,500), dated April 18, 1874, running for five years from date, with interest on the same, at the rate of ten per cent. per annum, from April 18, 1875; also a trust deed to Peter Schulenter, trustee, dated April 1, 1875, to secure eight (8) notes of the party of the first part for ($3,465.70), dated April 1, 1875, running for one year from date, but extended for a further term of one year, with interest on the same, at the rate of ten per cent. per annum, from date of notes aforesaid; also subject to the taxes and assessments for 1875 and subsequent thereto: blocks one (1), two (2), & three (3), of thirty-four (34) lots each, in Newell's addition to Park Ridge, being a subdivision of part of the west half (W. $\frac{1}{2}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section thirty-five (35), town forty-one (41) north, range twelve (12) east, of the third P. M., subject to a trust deed to Geo. A. Follansbee, trustee, dated July 26, 1873, to secure a note of James N. Wetherell & Kirk B. Newell for ($3,200), dated July 26,

1873, running five years from date, with interest on the same, at the rate of eight per cent. per annum, from January 26th, 1876; also a trust deed to Geo. A. Follansbee, trustee, dated July 26, 1876, to secure notes of the party of the first part amounting to three thousand & sixty dollars ($3,060), dated July 26, 1876, and running for two years from date, with interest on the same, at the rate of eight
34 per cent. per annum, from July 26, 1876, ($2,680) of the principal sum having been paid and cancelled; all of which said notes and encumbrances, together with the interest, taxes, and assessments as above set forth, the said second party hereby assumes and agrees to pay as his own debt as a part of the purchase price and save the said first party harmless therefrom.

And defendant attaches hereto a copy of said deed, marked "Exhibit A," and prays that it may be taken as part of his answer, and avers that in and by said deed and its terms and covenants as above set forth said Meserve agreed to assume all of said mortgages as part of the purchase price and to pay the same and save this defendant harmless therefrom.

That upon the delivery of said deed of conveyance to said Meserve said Meserve was about to convey to this defendant, in accordance with said contract and in payment for the said lands in Cook county, the said two lots on Purchase street, in Boston, and this defendant requested him to make the conveyances therefor to said Lucy T. Brown, the wife of this defendant, but wholly without her knowledge or consent and solely for the use of this defendant, and that at such request of defendant said Meserve in the deeds of conveyance of the said two lots inserted as grantee the name of said Lucy T. Brown, but required of this defendant that he should give to him his bond, of which a copy is made an exhibit to said bill of complaint, marked "Exhibit C," and thereupon and cotemporaneously therewith this defendant executed and delivered to said Meserve his said penal bond in the sum of $10,000, in order that, as said Meserve had by said contract agreed to assume and pay the mort-
35 gages on the Illinois lands and this defendant the mortgages on the Boston lands, and by making the conveyances to said Lucy T. Brown in the manner aforesaid said Meserve might sustain loss by being compelled to pay the mortgages on the Illinois property, and also the said mortgages on the said two lots, he might be secured from suffering loss in the transaction, but this defendant says the intent and purpose in the execution of the said bond was to secure said Meserve "only to the extent that said Meserve suffer harm" from the entire transaction, and that it should be binding and of effect only in the event that Meserve performed his obligations in this transaction and under said contract between them and this defendant failed to perform his part or to secure it to be performed, and defendant says that the said conveyance by him to said Meserve, and the said conveyances by said Meserve purporting to be to said Lucy T. Brown, and the said obligation made by this defendant to said Meserve were made and delivered cotemporaneously and in pursuance of said contract and as one entire transaction and without any other consideration.

Defendant further says that said Meserve thereafter wholly failed to pay the said mortgages upon the said lands in Cook county which were assumed by him as aforesaid or the interest that became due thereon or the taxes or assessments levied and assessed upon said lands, and that afterwards, when the several mortgages respectively became due, this defendant was obliged to pay the same and to pay interest that had accrued thereon and unpaid taxes and assessments, and that by reason of the said default by said
36 Meserve this defendant was obliged to and did lay out and expend the sum of more than $20,000.00, and that there is now due to him from said Meserve for the moneys so expended in taking up and satisfying the mortgages which said Meserve had assumed and agreed to pay and in paying the taxes left unpaid by said Meserve and for interest thereon a greater sum than is claimed to be due by said bill of complaint upon the said two mortgages so held by the Episcopal city mission.

And defendant says that he and the defendant Lucy T. Brown, if she is in anywise liable under the terms of said deeds of conveyance or otherwise, is entitled in this court of equity to recoup and set off against his, their, or either of their liabilities under the said penal bond and the aforesaid contract with said Meserve and against the balance that remains unpaid upon said mortgages held by said Episcopal city mission the said sums of money that he was obliged to expend by reason of the failure of the said Meserve to pay the several encumbrances upon said Cook county lands which he assumed and agreed with this defendant to pay and interest thereon, and that said Lucy T. Brown never assumed or agreed to pay said mortgages held by said mission and is not now and never was at any time liable to said complainants under said deeds.

Defendant further says that after the making of the said deeds of conveyance he paid the interest upon the said mortgages to said mission for a time and until said Meserve had abandoned the obligations which he had assumed and undertaken to perform, and that upon being satisfied that said Meserve had finally abandoned his obligations this defendant went to said Episcopal city mis-
37 sion and informed them that said Meserve was in default on the mortgages upon the Cook county lands assumed by him, and payment of said mortgages was being demanded of this defendant, and that he should decline to pay any more interest upon said mortgages held by them, and this defendant thereupon surrendered to them the said two lots and they took possession thereof and received the rents and income thereof.

And defendant says that at that time he stated to the officers of said Episcopal city mission that he had received said two lots from Meserve in payment for said lands in Cook county, and that said Meserve has assumed the mortgages upon said lands in Cook county, and that defendant's obligations to pay the mortgages held by said mission depended entirely upon the performance by Meserve of the obligations he had assumed in and by said deed from this defendant, and that, Meserve having abandoned his obligations in that regard, defendant would not consider himself bound; and defend-

ant, having now fully answered said bill of complaint, prays that he may be dismissed hence with his costs in this behalf most wrongfully sustained.

JOHN B. BROWN,
By OSBORN, COHRS & LYNDE,
His Solicitors.

C. M. OSBORN,
J. B. COHRS,
S. A. LYNDE,
Of Counsel.

38 U. S. revenue stamps to the amount of $— on this deed.

This indenture made this sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven between John B. Brown, and Lucy T. his wife of the city of Chicago, in the county of Cook and State of Illinois, party of the first part and George W. Meserve of the city of Boston, in the county of Suffolk, and State of Massachusetts, party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of one dollar ($1) and for other good and valuable considerations dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed aliened and confirmed and by these presents do grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following-described lot, piece or parcel of land, situate in the county of Cook and State of Illinois, and known and described as follows to wit, lots numbered fifteen (15) to twenty-four (24) both inclusive in block one (1) in Wright and Windett's subdivision of the northwest quarter (N. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section nine (9) township thirty-eight (38) north range fourteen (14) east of the third principal meridian (situate corner of Wallace & 54th Sts.) subject to a trust deed to D. K. Perasons, trustee, dated April 18, 1874, to secure a note of the
39 party of the first part for twenty-five hundred dollars ($2,500) dated April 18, 1874, running for five years from date, with interest on the same at the rate of ten per cent. per annum from April 18 1875. Also a trust deed to Peter Schlenter, trustee, dated April 1, 1875 to secure eight (8) notes of the party of the first part, for thirty-four hundred sixty-five & $\frac{70}{100}$ dollars ($3,465.70) dated April 1, 1875, running for one year from date, but extended for a further term of one year, with interest on the same at the rate of ten per cent. per annum from date of notes aforesaid, also subject to the taxes and assessments for 1875, and subsequent thereto. Blocks one (1) two (2) & three (3) of thirty-four (34) lots each in Newell's addition to Park Ridge being a subdivision of part of the west half (W. $\frac{1}{2}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section thirty-five (35) town forty-one (41) north range twelve (12) east of the third P. M. subject to a trust deed to Geo. A. Follansbee, trustee, dated July 26,

1873, to secure a note of James N. Wetherell & Kirk B. Newell for thirty-two hundred dollars ($3,200) dated July 26, 1873, running five years from date, with interest on the same at the rate of eight per cent. per annum from January 26th, 1876. Also a trust deed to Geo. A. Follansbee trustee, dated July 26, 1876, to secure notes of the party of the first part amounting to three thousand & sixty dollars ($3,060) dated July 26, 1876, and running for two years from date with interest on the same at the rate of eight per cent. per annum from July 26, 1876, twenty-six hundred and eighty dollars ($2,680) of the principal sum having been paid and cancelled. All of which said notes and encumbrances together with the interest, taxes and assessments as above set forth, the said second party
40 hereby assumes and agrees to pay as his own debt as a part of the purchase price, and save the said first party harmless therefrom.

Together with all and singular the hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all the estate right, title interest, claim or demand whatsoever, of the said party of the first part, either in law or equity of, in and to the above-bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part, his heirs and assigns forever.

And the said John B. Brown and Lucy T. his wife, party of the first part, for themselves heirs, executors, and administrators do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above conveyed as of a good, sure, perfect absolute and indefeasible estate of inheritance in law, in fee-simple and have good right, full power and lawful authority to grant, bargain sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances, of what kind or nature soever, and the above-bargained premises in the quiet and peac-able possession of the said party of the second part, his heirs and assigns against all and every other person or persons lawfully claim-
41 ing or to claim the whole or any part thereof, the said party of the first part, shall and will warrant and forever defend, except as to the encumbrances, interest, taxes &c., as above set forth. And the said party of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN B. BROWN. [SEAL.]
LUCY T. BROWN. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

STATE OF MASSACHUSETTS, } ss :
County of Essex, }

I, Milton G. Tenney, a notary public in and for the said county, in the State aforesaid, do hereby certify that John B. Brown and Lucy T. Brown, — are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this fourteenth day of March, A. D. 1877.

[NOTARIAL SEAL.] MILTON G. TENNEY,
Notary Public.

42 No. 128,454. Filed for record this 2 day of Ap'l, A. D. 1877, at 3 o'clock p. m.

JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss :
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 2d day of April, A. D. 1877, as document No. 128,454, and recorded in Book 710 of Records, at page 380.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at Chicago, this nineteenth (19th) day of July, A. D. 1877.

JAS. W. BROCKWAY, *Recorder.*

(Endorsed:) Filed Jan'y 3, 1877. Wm. H. Bradley, clerk.

Afterward, to wit, on the thirteenth day of January, 1887, came the complainants, by their solicitor, and filed in said clerk's office their replication to the answers of the defendants in said entitled cause; which said replication is in the words and figures following, to wit:

43 *Replication.*

In the Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION *et al.* }
vs.
LUCY T. BROWN *et al.* }

Replication of the complainants to the answers of the defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say that they will aver

and prove their bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants are severally uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that there is any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed and denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

GEORGE BURRY.
Sol. for Compl'ts.

(Endorsed:) Filed Jan'y 13, 1887. Wm. H. Bradley, clerk.

44 Afterward, to wit, on the tenth day of October, 1887, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN and JOHN B. BROWN. } 20387. 774. In Chancery.

It is hereby stipulated that William V. Kellen, Esq., may be appointed special examiner in Boston, Massachusetts, to take depositions in this cause under rule 67.

Chicago, October 7th, 1887.

GEORGE BURRY,
Solicitor for Complainant.
OSBORN & LYNDE,
Solicitors for Defendant.

(Endorsed:) Filed Oct. 10, 1887. Wm. H. Bradley, clerk.

45 On the same day, to wit, on the tenth day of October, in the adjourned October term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

On motion of complainants, by George Burry, Esq., their solicitor, it is ordered that this cause be referred to Henry W. Bishop, master in chancery, to take proof and report the same to the court, and

upon stipulation, this day filed, it is ordered that William V. Kellen, Esq., be appointed special examiner in Boston, Massachusetts, to take depositions in this cause under rule sixty-seven as amended.

46 Afterward, to wit, on the twelfth day of December, in the adjourned October term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN *et al.*
} In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of defendant John B. Brown to amend his answer herein, and, after hearing arguments of counsel, the court sustains said motion and grants leave to amend, and it is ordered that the replication on file stand to amended answer.

On the same day, to wit, on the twelfth day of December, 1887, came John B. Brown, by his solicitors, and filed in said clerk's office an amendment to his answer in said entitled cause; which said amendment is in the words and figures following, to wit:

47 *Amended Answer of John B. Brown.*

United States Circuit Court, Northern District of Illinois.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE, Complainants,
vs.
JOHN B. BROWN and LUCY T. BROWN, Defendants.

Amendment to answer of John B. Brown, defendant, impleaded with Lucy T. Brown, to the bill of complaint in said cause.

This defendant, by leave of court first had and obtained, comes now and files the amendment following to his answer to the said bill of complaint:

Defendant says that in the fall of 1877, upon being satisfied that the said Meserve had finally abandoned the obligations which he has assumed and undertaken to perform in reference to the said mortgages and encumbrances upon the said Cook county lands, he went to said Episcopal city mission and informed them that said Meserve was in default upon the said mortgages upon the Cook county lands and the interest accrued thereon, and that payment thereof was being demanded of this defendant, and that he could not pay the mortgages upon both the Boston and Cook county lands, but must make some arrangement with said mission in reference to the mortgages held by them upon the Purchase-street
48 lots; that he then paid them all interest due to that time upon the said mortgages and was not in default, and it was

agreed between him and the said mission that he should surrender to it possession of the said two lots, and that it should take possession thereof in trust for him and for themselves, and should receive the rents and income thereof and apply the same to keeping down the interest of the mortgages held by it upon said lots, and should endeavor to bring about a sale of said property for the purpose of paying it the sum to become due under its mortgages and to repay to this defendant the money which he had put into the said property, to wit, the sum of about six thousand dollars ($6,000).

Defendant says that thereupon said mission received from him the possession of said lots under this agreement, and from that time held said lots in such trust that thereafter defendant frequently requested said mission to bring about a sale of said property for the benefit of them both, and always understood from its officers that they were holding the said lots in a trust capacity and would make efforts to sell them for the highest price obtainable and to some third person.

But nothwithstanding the trust capacity in which said mission received possession of said lots from this defendant and continued to hold possession thereof, it proceeded in March, 1884, without returning or offering to return to him the possession of said lots, to sell said lots at forced sale as mortgagees, pretending to act under and by virtue of the covenants of its said mortgages therein and claiming to exercise the power of sale thereby given it, but wholly in disregard of the trust assumed by it for the benefit of this defendant.

49 That at this sale so made by it as mortgagee it proceeded to purchase said lots without any notice to defendant and without having offered or in any way sought to terminate the trust relation which it occupied toward this defendant, pretending, however, that the covenants of said mortgages gave it power to purchase at its own sale as mortgagee.

But defendant avers that a mortgagee cannot purchase the mortgaged property at its own sale, either directly or indirectly, and cannot convey as mortgagee to itself as purchaser, and that such purchase and deed is void, and any covenant purporting to give such power cannot be enforced in equity.

Defendant further says that after making this sale and pretended purchase said mission sought to convey said premises to itself as such pretended purchaser, and in its mortgage deed it sought to join with it as a grantor therein the said Meserve, but wholly without authority or power so to do or to execute such deeds for him; that thereupon, in behalf of it as such pretended purchaser, certain of its officers sought to make formal entry upon said premises and upon its possession thereof as mortgagee and in trust under the agreement with this defendant and did make a pretended formal entry upon the said premises, being at the same time in posses-ion thereof in trust as aforesaid; and defendant avers that said attempted sale of said premises by it in pretended compliance with the covenants of its mortgages and its pretended purchase and conveyance to itself and said pretended entry upon said premises did

not effect a foreclosure of said mortgages and were void and
50 did not in any way change or abrogate the trust capacity in which it held said premises, and that thereafter it continued to hold the same in trust and as mortgagee and liable to account for and to be charged with the rents received by it and the proceeds of any sale it should make thereof.

That afterwards said mission held said property for about two years, pretending to be the owner thereof, and received the rents and profits thereof, the amount of which this defendant is not able to state, and in 1886 it sold said lots to one Blodgett for $17,000 each, thus receiving on each lot $3,000 more than the pretended sum at which it claims to have purchased said lots at its own sale in violation of its trust relation to this defendant; and defendant avers that said mission should be charged in the account of the sums remaining due to it on the said mortgages with the rents received by it after the pretended purchase in 1884 and with the sums received by it on its sale of said lots in 1886, and that the deficiency resulting to it under said mortgages is the balance that remained due to it in 1886, after these charges are made, and not the amount that remained due after the pretended purchase in 1884.

Defendant further says that he had no notice or knowledge that said mission claimed to have become the owner of said property by its pretended purchase or of its pretended entry upon the said premises, and was first informed of said pretended purchase and claim of ownership thereby and entry upon said premises by said mission and its subsequent sale in 1886 by the evidence offered by it as complainant herein.

OSBORN & LYNDE,
Def't's' Solicitors.

C. M. OSBORN,
S. A. LYNDE,
Of Counsel.

(Endorsed:) Filed Dec. 12, 1887. Wm. H. Bradley, clerk.

51 *Testimony Taken before Wm. V. Kellen, Special Examiner, at Boston, Mass.*

Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN and JOHN B. BROWN. } 20387. 774. In Chancery.

The depositions of John S. Blatchford, Thomas F. Temple, Francis V. Balch, William Hedge, John Rolfe, Warren K. Blodgett, witnesses on the part and behalf of the complainants in the cause above entitled, now depending in said circuit court in and for the northern district of Illinois, taken before me, William V. Kellen, a special examiner appointed by said circuit court by an order entered

in said circuit court on the tenth day of October, A. D. 1887, a copy of which is hereto annexed, at the offices, by agreement, of Messrs. Balch & Rackemann, at 39 Court street, in Boston, Massachusetts, on the twenty-fifth day of October, A. D. 1887, to which time the hearing was, by stipulation of counsel hereto annexed, adjourned from the eighteenth day of October, A. D. 1887, as at first agreed, pursuant to a notice to that effect duly given by George Burry, Esq., solicitor for the complainants, and agreed to by Messrs. Orborne & Lynde, solicitors for the defendants, and hereto annexed, and thereafter by adjournment, under agreement by counsel, on the twenty-sixth, twenty-ninth day- of October, A. D. 1887, and on the second day of November, A. D. 1887.—George Burry, Esq., and Felix Rackemann, Esq., appeared on behalf of the complainants and Ira R. Clark, Esq., appeared on behalf of the defendants. The said witnesses, having been first by me duly sworn to tell the whole
52 truth relative to the issue in the cause aforesaid, gave the following depositions in response to interrogatories proposed by George Burry, Esq., and Felix Rackemann, Esq., for the complainants and to cross-interrogatories proposed by Ira R. Clark, Esq., for the defendants:

United States Circuit Court, Northern District of Illinois.

MONDAY, *October* 10, 1887.

Present: Hon. Henry W. Blodgett, district judge.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

On motion of complainants, by George Burry, Esq., their solicitor, it is ordered that this cause be referred to Henry W. Bishop, master in chancery, to take proof and report the same to the court.

And upon stipulation this day filed it is ordered that William V. Kellen, Esq., be appointed special examiner in Boston, Massachusetts, to take depositions in this cause under rule sixty-seven as amended.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered in said court on the tenth day of October, A. D. 1887, in the cause wherein The Episcopal City Mission *et al.* are the
53 complainants and Lucy T. Brown *et al.* are the defendants, as the same appears from the original record now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Chicago, in said district, this 11th day of October, A. D. 1887.

WM. H. BRADLEY, *Clerk.*

In the Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN and JOHN B. BROWN. } 20387. 774.

To Messrs. Osborne, Cohrs & Lynde.

GENTLEMEN: Please take notice that on the 18th day of October, 1887, at eleven o'clock in the morning, the complainant will proceed to take testimony in the above-entitled cause before Special Examiner William V. Kellen, Esq., at his office, 39 Court street, Boston, Massachusetts, and will continue to take such testimony from day to day until completed.

Chicago, October 7th, 1887.

GEORGE BURRY,
Solicitor for Complainants.

We hereby consent to the above.

Chicago, October 7th, 1887.

OSBORNE & LYNDE,
Solicitors for Defendants.

54 In the Circuit Court of the United States for the Northern District of Illinois.

EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN *et al.* } 20387. 774.

It is hereby stipulated and agreed that the time for taking depositions in this cause before the special examiner in Boston, heretofore fixed at the 18th day of October, A. D. 1887, is by consent changed to the 25th day of October, A. D. 1887.

Chicago, October 14th, 1887.

GEORGE BURRY,
Solicitor for Complainant.
OSBORNE & LYNDE,
Solicitors for Defendants.

55 In the Circuit Court of the United States for the Northern District of Illinois.

THE EPISCOPAL CITY MISSION
vs.
LUCY T. BROWN *et al.* } 20387. 774.

To said defendants and their solicitors, Messrs. Osborne & Lynde:

You are hereby notified to produce on the taking of testimony in this cause on October 25, A. D. 1887, before the special examiner, William V. Kellen, Esq., in Boston, the original deed from George W. Meserve to Lucy T. Brown, dated the 1st day of March, 1877

which is signed by the said George W. Meserve and Esther M. Meserve, his wife, and conveys lot three (3), more fully described in the pleadings in this cause, a copy of which deed is attached to the bill of complaint in this cause and marked Exhibit A; also the original of the deed from George W. Meserve to Lucy T. Brown, dated the 1st day of March, 1877, signed by George W. Meserve and Esther M. Meserve, which conveys lot four (4), referred to and more fully described in the pleadings in this cause, a copy of which deed is attached to the bill of complaint in this cause and marked Exhibts B 1, and that in case of your failure so to do the complainants will introduce secondary evidence thereof.

Chicago, October 21st, 1887.

GEORGE BURRY,
Solicitor for Complainant.

Received copy of the above notice this 21 day of October, 1887.
OSBORNE & LYNDE.

56 BOSTON, *October* 25, 1887.

JOHN S. BLATCHFORD sworn.

(By Mr. BURRY:)

Q. State your name, age, occupation, and place of residence.

A. John S. Blatchford; 53; treasurer of one or two corporations; Boston.

Q. Do you know one of the complainants in this case, Episcopal City Mission?

A. Yes, sir.

Q. What, if any, connection have you with that corporation?

A. I am the treasurer.

Q. How long have you been the treasurer?

A. I think since 1874; thereabouts.

Q. What is the purpose of the corporation?

A. It is for the prosecution of missionary work within the limits of the city of Boston.

Q. During the year 1883 and since who has been president of that corporation?

A. The bishop of the diocese, Benjamin H. Paddock.

Q. As treasurer of that corporation have you the custody of the evidences and securities of property belonging to the corporation?

A. I have.

Q. Examine Complainants' Exhibit A and state whether that has been in possession of the corporation; and, if so, how it came.

A. It has been in possession of the Episcopal city mission, and it came into my possession as treasurer through the hands of Mr. R. T. Paine.

Q. State whether with it came the note referred to therein.

A. Yes.

57 Q. Was the note the property of the corporation?

A. It was.

Q. State whether that note was ever paid.
A. It has not been.
Q. State what, if anything, was done by your corporation to collect the indebtedness secured by this mortgage.
A. The mortgage was foreclosed.
Q. State whether in pursuance of that foreclosure any mortgagee's deed was ever executed.
A. Yes.
Q. Examine Complainants' Exhibit A 2 and state whether that is the mortgagee's deed referred to.

Objected to as incompetent and immaterial.

A. That is the deed.
Q. At the bottom of the mortgagee's deed referred to is an affidavit which purports to be signed by Benjamin H. Paddock, president, and John S. Blatchford, treasurer. Was that affidavit made and subscribed by you?

Same objection.

A. It was.
Q. State whether the facts therein stated are true.

Same objection.

A. They are.
Q. You know Benjamin H. Paddock or Bishop Paddock?
A. I do.
Q. Was that affidavit also subscribed and sworn to by him?

Same objection.

A. It was.

58 Q. State whether Bishop Paddock and yourself as president and treasurer of the Episcopal city mission were authorized to foreclose the said mortgage A.

Objected to. Such authorization must appear by the records of the corporation.

A. We were.
Q. At the time of the foreclosure did the property bring enough to satisfy the indebtedness secured by mortgage A?
A. It did not.
Q. For how much did the property sell?
A. I presume for $14,000.
Q. How much did the sale net the mission?

Objected to.

A. $13,924.
Q. How much of a balance or deficiency did that leave due on lot 3?
A. $10,574.71.
Q. Have you a statement of the account with lot 3 up to the time of the foreclosure?
A. Yes.

Q. Will you attach it to your deposition and mark it Complainants' Exhibit A 3?

A. I will.

Objected to for the reason that the account contains matter not appearing to be within the knowledge of the witness.

Q. As treasurer of the mission is it your business to keep accounts of the business of the mission?

A. It is.

Q. What, if anything, further did you do towards foreclosing mortgage A?

A. We entered and took possession.

Q. Whom do you mean by we?

A. Bishop Paddock and myself.

59 Q. When did you enter?

A. The 12th day of March, 1884.

Q. Who were present?

A. Besides Bishop Paddock and myself?

Q. Yes, sir.

A. Mr. Paine was present.

Q. Who else?

A. I think Mr. Balch, and probably—I can't say certainly—one or two others of the executive board of the Episcopal city mission. I think Mr. French was present.

Q. Have you remained in possession ever since?

A. Yes; until the sale of the property in 1886.

Q. Since the sale has anything further been paid on the indebtedness secured by mortgage A?

A. There has not.

Q. Examine the paper marked Complainants' Exhibit B, and state whether that came to your possession as treasurer of the mission.

A. Objected to as incompetent and immaterial.

A. It did.

Q. At the time did the note mentioned therein also come to your possession?

A. It did.

Q. As the property of the mission?

A. Yes.

Q. Was that note ever paid?

A. It was not.

Q. What did you do towards enforcing payment of it? Did you foreclose the property described in mortgage B?

A. Yes.

Q. In pursuance of that foreclosure, was there executed a mortgagee's deed?

A. There was.

Q. Examine Complainants' Exhibit B 2 and state whether that is the mortgagee's deed referred to.

60 Objected to as incompetent and immaterial.

A. It is.

Q. At the bottom of the mortgagee's deed referred to is an affidavit which purports to be signed by Benjamin H. Paddock and by John S. Blatchford, treasurer. State whether that was subscribed and sworn to by you.

Same objection.

A. It was.

Q. State whether it was also subscribed and sworn to by Bishop Paddock.

Same objection.

A. It was.

Q. Is the said affidavit subscribed and sworn to by you true?

Same objection.

A. It is.

Q. How much was realized by the sale of the said property, net?

A. $14,424.

Q. How much deficiency did that leave on the note secured by said mortgage?

A. $10,074.71.

Q. Has anything since been paid on account of the said indebtedness?

61 A. There has not.

Q. Have you prepared a statement showing the account with the said lot and said note?

A. Yes.

Q. Will you attach it to your deposition and mark it Complainants' Exhibit B 3?

A. I will.

Objected to as containing matters not yet appearing to be within the knowledge of the witness.

Q. State what, if anything, further was done by the mission towards foreclosing mortgage B.

A. We entered and took possession on the 12th day of March, 1884.

Q. By we, you mean Bishop Paddock and yourself on behalf of the mission?

A. Yes.

Q. Since that time have you continued in possession of the property?

A. We have until 1886.

Q. When you sold the property?

A. When we sold the property.

Q. Examine the papers which we will mark Complainants' Exhibits D and E and state whether the copies therein contained from the records of the mission are true copies.

A. They are.

Mr. BURRY: We offer those in evidence.

Cross-examination.

(Defendant cross-examines *de bene* without waiving any of his previous objections.)

(By Mr. CLARK:)

Q. Have you the notes with you?
A. I have.
Q. Does the Episcopal city mission still own the property?
A. It does not.
Q. How long ago was it sold?
62 A. March 2, 1886, the papers so attest.
Q. Do you know what sum was realized for lot 3 in that sale?

Objected to because it is not cross-examination and is immaterial.

A. $17,000. I would state that we sold three lots for a total of $51,000. My impression is that each estate brought the same price, $17,000, which would make the aggregate $51,000.
Q. So that you realized $17,000 on lot 3 and $17,000 upon lot 4?
A. I presume so.
Q. In addition to that the property was occupied by tenants?
A. Yes.
Q. From the time of your purchase at the foreclosure sale until the property was sold by the corporation?
A. Yes.
Q. Do you know what amount in rent the corporation received between those two dates?
A. I can't state now; I could easily ascertain the precise amount.

Mr. BURRY: All questions relating to this subject are objected to for the same reason as the last.

Q. Did you personally have any deal with Mr. Meserve at the time he gave you the mortgages upon lot 3 and 4?
A. I never had any personal relations with Mr. Meserve whatever. I don't know that I ever saw him.
Q. As officer of this corporation, have you any knowledge of any agreement between Meserve and the corporation made just prior to the execution of the mortgages in question?
A. I have not.
Q. Do you know who, in behalf of the corporation, dealt with Meserve in this matter?
A. Mr. Paine.
63 Q. Mr. Robert Treat Paine?
A. Yes.
Q. Will you kindly examine the files and papers of your corporation and ascertain if there is any written agreement between the corporation and Meserve in relation to the property embraced in these mortgages, lots 3 and 4, and produce the same, if any such

there be? I mean any agreement made prior to the examination of the mortgages.

A. I will.

(Recess till 2.30 o'clock.)

Q. Have you since the adjournment searched the files of your corporation for the purpose of finding any agreement with Mr. Meserve executed at or prior to the execution of the mortgages in question?

A. I should have to reply to that that I had not searched the files. The files are here. Every paper in existence relating to the Purchase-street estates are here. I enquired of Mr. Clark, who is very familiar with all the details, if he had any knowledge of any agreement between Mr. Meserve and the Episcopal city mission, and he had not; he had no knowledge of any. The only further inquiry or search for information that I could possibly make would be to inquire of Mr. Paine.

Redirect.

(By Mr. BURRY:)

Q. What have you done with all the papers relating to this litigation?

A. They are in the possession of Mr. Reckemann, in the safe.

Mr. BURRY: I personally will state, Mr. Clark, that I have no such agreement and have never heard of any.

Q. What were the notes given for—money loaned or something else?

A. Partly. I supposed it would be fair to say they were
64 given partly in payment of the purchase of the property, of the land, and partly as representing advances made by the Episcopal city mission for the improvement of those lots.

(By Mr. CLARK:)

Q. Can you state how much money was advanced upon the mortgage on lot 3 and how much upon the mortgage on lot 4?

A. I cannot.

(By Mr. BURRY:)

Q. Your corporation still owns the notes, Mr. Blatchford?

A. Yes; they are still in our possession.

Q. You still own them?

A. Yes; they are ours.

Q. Please mark said notes respectively Complainants' Exhibit A 6 and Complainants' Exhibit B 6 and attach them to your deposition.

A. I have done so.

65 BOSTON, *October* 29, 1887.

(By Mr. CLARK:)

Q. Can you state how much money was advanced by the Episcopal city mission upon the mortgages in question upon lots 3 and 4? I mean the mortgages described in complainants' bill as given by George W. Meserve to said mission upon said lots.

A. The land of which this particular estate was one was sold for $67,000. The land sold by the Episcopal city mission represented five estates. There was accrued interest upon that sale amounting to $2,579.76, there were cash advances to the amount of $26,518.24, making a total of $96,098. Meserve sold one of those estates, from the proceeds of which sale he repaid to the Episcopal city mission $18,098 of the cash advances which had been made him, and gave four mortgage notes of $19,500 each, amounting to $78,000, which makes up the total aggregate of the sum previously given as $96,098. Now, it will be seen that there was $26,518.24 cash advances towards the improvement of the property, of which $18,098 was repaid by Meserve, leaving a balance of $8,420.24 of the cash advances for improvement of the property which has never been repaid. That balance of $8,420.24 is divisible among the remaining four estates, and it is not possible to state more accurately the proportion of the $19,500 mortgage notes which represents cash advances and purchase of the land in the case.

(By Mr. RACKEMANN:)

Q. You say it is not possible to state it more accurately. State whether or not you can say how these lots stood as to each other in the account; whether or not the sum might be equally divided into the four lots?

A. It could not; that would be one of the difficulties in
66 reaching an exact statement, inasmuch as the lots varied in size.

Q. I am speaking now only of the remaining four lots after the fifth was sold.

A. My impression is that those lots are not all of corresponding size, but I will not be certain upon that point.

Q. Whether or not the lots so far as the accounts go have ever been treated as substantially different one from another, the remaining four.

A. No; they have not.

(By Mr. CLARK:)

Q. The proper way of dividing this balance of $8,420.24 is by dividing it among the four lots according to their respective size.

A. Well, the difference in size is very slight; it will do for all practical purposes.

Q. I suppose sufficiently near to just divide that $8,420.24 among the four lots equally?

A. Yes; I think so. It would be a sufficiently close approximation for all practical purposes.

Mr. RACKEMANN: We offer in evidence papers marked respectively Complainants' Exhibit A, and certificate thereto attached; Complainants' Exhibit B, and certificate thereto attached; Complainants' Exhibit A 1 and Complainants' Exhibit B 1, and certificates thereto attached in each case; Complainants' Exhibit A 2 and Complainants' Exhibit B 2, and certificates thereto attached; Complainants' Exhibit A 3 and Complainants' Exhibit B 3, Complainants' Exhibit A 4 and Complainants' Exhibit B 4, and certificates thereto attached; Complainants' Exhibit A 5 and Complainants'
67 Exhibit B 5, and certificates thereto attached; Complainants' Exhibit A 6 and B 6 and Complainants' Exhibits D and E.

Defendants object to the admission of Exhibits D and E as incompetent, irrelevant, and immaterial for the reason that there is no proof yet offered of the by-laws or other articles of incorporation in any way authorizing the said votes; also object to A 5 and B 5 as incompetent, irrelevant, and immaterial, and for the same reason object to A 1 and B 1, and for the further reason that they are not yet sufficiently proved.

JNO. S. BLATCHFORD.

68 BOSTON, *October* 25, 1887.

THOMAS F. TEMPLE sworn.

(By Mr. BURRY:)

Q. Please state your name, age, occupation, and place of residence.

A. Thomas F. Temple; 49 years of age; residence, Boston; occupation, register of deeds.

Q. How long have you been register of deeds?

A. Since 1871.

Q. For the county in which Boston is?

A. Suffolk county; yes, sir.

Q. Examine the paper which I now hand you and which, for the purposes of identification, I will ask the examiner to mark Complainants' Exhibit A, and state whether that paper is recorded in your records; and, if so, where and when it was recorded?

A. This paper is recorded in Suffolk records on Book 1368, page 147, and was received for record on the 25th day of March, 1877.

Q. As appears by your certificate thereon?

A. Yes, sir.

Q. Examine the paper which I now hand you, and which for the purpose of identification the examiner will mark Complainants' Exhibit B, and state whether that paper is recorded in your records; and, if so, where and when it was recorded?

A. This paper is recorded in Book 1368, folio 148, of Suffolk records; was received for record on the 20th of March, 1877, 3 o'clock and 20 minutes.

Q. As appears by your certificate thereon?

A. Yes, sir.

Q. Examine the paper which I now hand you, and which for

purposes of identification we will mark Complainants' Exhibit A 2, and state whether that paper was ever recorded in your rec-
69 ords; and, if so, where and when it was so recorded?

A. There are two documents here. The deed was recorded in Book 1629, folio 566, the Affidavit Book 1629, folio 568, on the 12th day of March, 1884, at 40 minutes past one.

Q. As appears by your certificates thereon?

A. As appears by my certificates annexed.

Q. Examine the paper now handed you, and which for the purposes of identification we will mark Complainants' Exhibit B 2, and state whether that has been recorded in your records; and, if so, 71 when and where it was so recorded?

A. This instrument, the deed, is recorded in Book 1629, folio 572, the Affidavit Book 1629, folio 574; it was received for record on the 12th day of March, 1884, at 40 minutes past one, as certified to and evidenced by my signature to the same.

Q. Examine the paper now handed you, and which for the purposes of identification we will mark Complainants' Exhibit A 4, and state whether that paper is recorded in your records; and, if so, where and when?

A. This is recorded in Book 1629, folio 562, on the 12th day of March, 1884, at 40 minutes past one.

Q. As appears by your certificate thereon?

A. Yes, sir.

Q. Examine the paper now handed you, and which for the purposes of identification we will mark Complainants' Exhibit B 4, and state whether in your records; and, if so, where and when?

A. This is recorded in Book 1629, folio 561, on the 12th day of March, 1884, at 40 minutes past one, as evidenced by my certificate thereon.

70 Q. Examine the paper now handed you and which for the purposes of identification we will mark Complainants' Exhibit A 1, and state whether that is a true copy from the records of your office.

A. That is a true copy from the Suffolk records of the deed recorded with Book 1368, page 150.

Q. Will you state whether the record of which that was a copy was made in due course of business at your office?

Objected to as incompetent and immaterial.

A. This is a copy of an instrument which was recorded in the due course of business on the 20th of March, 1877, at 3 o'clock and 20 minutes in the afternoon.

Q. Examine the paper which I now hand you and which for the purposes of identification we will mark Complainants' Exhibit B 1, and state whether that is a true copy of a record in your office.

A. That is a copy of the deed recorded with Book 1368, folio 151.

Q. State whether the record of which it is a copy was made in the due course of business at your office.

Objected to as incompetent and immaterial.

A. It was recorded in the due course of business in the office. Received for record on the 20th of March, 1877, at 20 minutes past three in the afternoon.

Q. Examine the paper which I now hand you and which for the purposes of identification we will mark Complainants' Exhibit A 5, and state whether that is a true copy from the records of your office.

Objected to as immaterial and incompetent.

A. This is a true copy of the marginal endorsements in the margin of the mortgage recorded in Book 1368, folio 147.

71 Q. Examine the paper now handed you and which for the purposes of identification we will mark Complainants' Exhibit B 5, and state whether that is a true copy from the records of your office.

Same objection.

A. This is a correct copy of the endorsements made in the margin of the mortgage recorded in Book 1368, folio 148.

Q. State when the marginal entries appearing in A 5 were made on your record.

A. I can't do it.

Q. State whether the marginal entries shown in Exhibit A 5 were made in the due course of business of your office.

Objected to as immaterial and incompetent.

A. They were.

Q. State whether the marginal entries shown in Exhibit B 5 were made in the due course of business of your office?

Same objection.

A. They were.

(No cross-examination.)

THOS. F. TEMPLE.

72 BOSTON, *October* 25, 1887.

FRANCIS V. BALCH sworn.

By Mr. BURRY:

Q. What is your full name?
A. Francis Vergines Balch.
Q. Your occupation?
A. Lawyer.
Q. Place of residence?
A. Boston.
Q. How long have you been in business in this city?
A. Since 1860.
Q. Please examine Complainants' Exhibit A 2 and state whether the signatures to the deed were witnessed by you.
A. Undoubtedly. I speak from my professional practice in such cases, not from any present recollection as to the particular case.

Q. Were they acknowledged before you?
A. They were.
Q. Please examine the affidavit attached to the said deed and state whether it was subscribed and sworn to before you.
A. It was sworn to before me and, doubtless, signed before me, although that does not appear. A witness is not necessary in this State.
Q. Please examine Complainants' Exhibit B 2 and state whether the signatures to that deed were witnessed by you.
A. They were.
Q. Was the deed also acknowledged before you?
A. It was.

73 Q. Please examine the affidavit attached to said deed and state whether it was sworn to before you.
A. It was.

Q. Please examine Complainants' Exhibit A 4 and state whether that affidavit was sworn to before you.
A. It was.
Q. Please examine Complainants' Exhibit B 4 and state whether that affidavit was sworn to before you.
A. It was.
Q. State whether Complainants' Exhibit A 2 was executed in your presence.
A. I should make the same answer.
Q. What is that answer, Mr. Balch?
A. That it was.
Q. Is that your signature attached as a witness?
A. It is.
Q. The signature to the jurat attached to the affidavit on A 2 is your signature, is it, Mr. Balch?
A. It is.
Q. State whether B 2 was executed in your presence.
A. It was.
Q. Is the signature as witness your signature?
A. It is.
Q. The signature as to the jurat in B 2 is your signature, is it?
A. It is.
Q. The signature as to the jurat in A 4 is your signature?
A. It is.
Q. The signature as to the jurat in B 4 is your signature?
A. It is.

(No cross-examination.)

FRANCIS V. BALCH.

74 BOSTON, *October* 26, 1887.

WILLIAM HEDGE sworn.

(By Mr. RACKEMANN:)

Q. Please state your full name.
A. William Hedge.

Q. Residence?
A. Plymouth, Massachusetts.
Q. Occupation?
A. Lawyer.
Q. How long have you been a lawyer?
A. Twenty years.
Q. Engaged during those twenty years in active practice?
A. Principally in conveyancing.
Q. And where?
A. Boston and Plymouth and the eastern part of Massachusetts generally.
Q. Examine Complainants' Exhibit A and the execution, and state whether or not you witnessed the execution of that instrument?
A. I have no recollection of the circumstances, but I see my signature as a witness to the execution of it by George W. Meserve, and that I took the acknowledgment.
Q. And you identify your signature in the testimonial clause?
A. In the attestation clause and as justice of the peace.
Q. Examine Complainants' Exhibit B, and state whether or not you witnessed the execution of that instrument?
A. I have no recollection of the circumstances of it, but I see that I witnessed the signature of George W. Meserve and took his
75 acknowledgment as justice of the peace.
Q. Did you see George W. Meserve sign his name?
A. I must have.
Q. And is that your signature in the attestation clause?
A. It is.
Q. And is it your signature as justice of the peace?
A. It is.

(No cross-examination.)

WILLIAM HEDGE.

76 BOSTON, *October* 29, 1887.

JOHN H. ROLFE sworn.

(By Mr. RACKEMANN:)

Q. State your name, Mr. Rolfe.
A. John H. Rolfe.
Q. And residence.
A. 286 Boston street, Dorchester.
Q. Where were you resident in the year 1877?
A. Boston.
Q. Your occupation?
A. Reporter.
Q. What was your occupation in 1877?
A. Clerk.
Q. In whose employ?
A. Robert Treat Pain, Jr.
Q. That is now?
A. Robert Treat Paine.

Q. Kindly explain Complainants' Exhibit A and state whether or not you know the handwriting in which the body of the instrument is written.

A. The body of the instrument is in my handwriting.

Q. State whether or not you witnessed that instrument.

A. I did witness this instrument.

Q. And you recognize your signature in the attestation clause?

A. I do.

Q. Examine Complainants' Exhibit B and state whether or not you recognize the handwriting in which the body of the instrument is written.

A. The body of the instrument is in my handwriting.

77 Q. Whether or not you witnessed that instrument?

A. I witnessed this instrument.

Q. Whether or not you recognize your signature in the attestation clause?

A. I do.

Q. Whether or not you saw the parties sign Complainants' Exhibits A and B?

A. I should not have been likely to have signed that without seeing them.

Q. Whether or not you can state any more definitely in regard to the signature of both or either?

A. I cannot.

Q. Whether or not you are sure of your own signature?

A. I am; yes, sir.

(No cross-examination.)

JOHN H. ROLFE.

78 BOSTON, *November* 2, 1887.

WARREN K. BLODGETT sworn.

(By Mr. RACKEMANN:)

Q. If you will, kindly state your full name, sir.

A. Warren K. Blodgett.

Q. And your residence.

A. Lincoln, Massachusetts.

Q. And your occupation.

A. Retired from business.

Q. Kindly state whether or not you purchased at any time from the Episcopal city mission any property on Purchase street, in Boston; and, if so, what property and at what time.

A. I did. I purchased three stores, from No. 218 to 228—that is, numbered on the street—on the 9th of March, 1886; that is the time it is recorded.

Q. If that property is numbered in lots, will you kindly state what it was?

A. Lots No. 2, 3, & 4 on plan of S. Ellis, October 24, 1876.

Q. State whether or not you have since retained the possession and title of that property, Mr. Blodgett.

A. Yes, sir.

Cross-examination.

(By Mr. CLARK:)

Q. Have you with you the deed which the Episcopal city mission gave to you conveying those lots?

A. Have I the deed?

Q. Yes.

A. Yes, sir.

Q. Will you state the consideration of said deed?

Objected to as incompetent for the reason that it is not
79 cross-examination and is immaterial.

A. $51,000; that is the consideration paid for lots 2, 3, and 4.

Q. How much did you pay for those lots to the Episcopal city mission?

Objected to as incompetent for reasons given above.

A. I paid $51,000.

Q. Was that all?

A. That is all.

Q. This sum you paid to the Episcopal city mission, did you?

Objected to as incompetent.

A. I did, excepting a mortgage that was on two of the lots, I think, at the time, which I paid since.

Q. But those were charged in as a part of the purchase-money?

A. Those were charged in as a part of the $51,000.

WARREN K. BLODGETT.

80 COMPL'TS' EXHIBIT "A" FOR IDENTIFICATION. W. V. K.

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in consideration of nineteen thousand, five hundred dollars paid by the Episcopal city mission, a corporation established under the laws of the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said corporation a certain lot of land lying on Purchase street in said Boston, and bounded and described as follows viz:

Northwesterly on said Purchase street, twenty-four $\frac{86}{100}$ feet; southwesterly on other land of said corporation, on a straight line running in part through the centre of the brick partition wall and in part in the same course sixty-one $\frac{40}{100}$ feet to the center of a four-foot passageway; southeasterly on the center line of said passageway twenty-five $\frac{60}{100}$ feet, and northeasterly on other land of grantor on a straight line running to and through the center of the brick partition wall sixty-one $\frac{59}{100}$ feet. Containing fifteen hundred and thirty-five (1,535) square feet, and being lot number three on a plan of S. C. Ellis, dated 24 October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2 October, 1876, and re-

corded with Suffolk deeds Lib. 1354 fol. 163, with all the rights and easements thereto belonging and especially with all rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

Also, with all rights of light and air and passage in a strip
81 of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises, being lot number four on said plan, and said strip extends the whole width of said lot number four.

It is hereby provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding and any other usual rights forever.

Being a part of the premises conveyed to me by deed of said corporation of even date herewith and this mortgage is delivered to said corporation simultaneously with the delivery of said deed to me, to secure a part of the purchase-money. Subject also to the rights and easements set forth in said deed to me, and in my mortgage of the adjoining estate to said corporation of even date herewith.

To have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Episcopal city mission and its assigns, to its and their use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators covenant with the grantee and its assigns that I am lawfully seized in fee-simple of the granted premises, and that they are free from all encumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will, and my heirs executors and administrators shall warrant and defend the same to the grantee and its assigns forever against the lawful claims and demands of all persons, except as aforesaid.

82 Provided nevertheless, that if I or my heirs, executors, administrators or assigns, shall pay unto the grantee or its assigns the sum of nineteen thousand, five hundred dollars in three years from this date, with interest semi-annually at the rate of six and one-half per cent. per annum, and until such payment shall pay all taxes and assessments on the granted premises, shall keep the buildings thereon insured against fire in a sum not less than six thousand dollars, for the benefit of the grantee and its assigns at such insurance office as it or they shall approve, and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained, then this deed, as also one note of even date herewith, signed by me whereby I promise to pay to the grantor or order the said sum and interest at the times aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition, the grantee or its assigns may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release thereof, together with all

improvements that may be thereon, at public auction in said city of Boston, first publishing a notice of the time and place of sale, once each week for three successive weeks in some one newspaper published in said city of Boston and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee-simple, and such sale shall forever bar me and all persons claiming under me from all right and interest in the granted premises, whether at law or in equity. And out of the moneys arising from such sale, the grantee or its assigns shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs charges and expenses incurred or sustained by
reason of any failure or default on the part of me or my repre-
83 sentatives to perform and fulfill the condition of this deed, rendering the surplus if any, to me or my heirs or assigns.

And it is agreed that the grantee or its assigns, or any person or persons in its or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase-money, and that until default in the performance of the condition of this deed, I, and my heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof. And I do hereby for myself and my heirs, and assigns further covenant with the grantee and its assigns, that on each sale I, and they will upon request execute and deliver such further deeds and instruments as may be necessary or proper to confirm said sale and to vest the title to the premises sold in the purchaser thereof.

And for the consideration aforesaid, I, Esther M. Meserve, wife of said George W. Meserve, do hereby release unto the grantee, all right of or to both dower and homestead in the granted premises.

In witness whereof, we, the said George W. Meserve, and Esther M. Meserve, hereto set our hands and seals this first day of March, in the year one thousand eight hundred and seventy-seven. The word "east," inserted on the first page before signing.

GEORGE W. MESERVE. [SEAL.]
ESTHER M. MESERVE. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM HEDGE, to G. W. M.
JOHN H. ROLFE, witness to Esther M. Meserve.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

MARCH 20TH, 1877.

84 Then personally appeared the within-named George W. Meserve and acknowledged the foregoing instrument to be his free act and deed before me—

WILLIAM HEDGE,
Justice of the Peace.

BOSTON, *March 20th*, 1877—3 h. 20 m. p. m.

Received and entered with Suffolk deeds, Libro 1368, folio 147.
Attest: THOS. F. TEMPLE, *Register.*

(Endorsed:) Suffolk registry, Mar. 29, 1877, 3.20 p. m.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that William Hedge, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgment of deeds of conveyances for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace; that due faith and credit are and ought to be given to his official acts; that I am well ac-
85 quainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in said county and Commonwealth, this 24th day of October, A. D. 1887.

[SEAL.] JOS. A. WILLARD.

COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S DEPARTMENT,
BOSTON, *October* 25, 1887.

I hereby certify that the attestation hereunto annexed is in due form and by the proper officer.

[SEAL.] In testimony of which I have hereunto affixed the seal of the Commonwealth.

HENRY B. PEIRCE,
Secretary of the Commonwealth.

86 EXHIBIT A "1" FOR IDENTIFICATION. W. V. K.

Meserve to Brown.

Lib. 1368, fol. 150.

Know all men by these presents, that I, George W. Meserve of Boston, in the county of Suffolk and Commonwealth of Massachusetts in consideration of thirty thousand dollars to me paid by Lucy T. Brown, wife of John B. Brown, of Chicago, Cook county, Commonwealth of Illinois, the receipt whereof is hereby acknowledged,

do hereby give, grant, bargain, sell and convey unto the said Lucy T. Brown, all that lot of land on Purchase street, in said Boston with a new brick store thereon, bounded and described as follows viz: Northwesterly on said Purchase street twenty-four and $\frac{86}{100}$ (24.86) feet southwesterly on land of Episcopal city mission on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one and $\frac{40}{100}$ (61.40) feet to the center of a four-foot passageway. Southeasterly on the center line of said passageway twenty-five and $\frac{6}{100}$ (25.06) feet and northeasterly on other land of said Episcopal city mission on a straight line running to and through the center of the brick partition wall sixty-one and $\frac{59}{100}$ (61.59) feet, containing fifteen hundred and thirty-five (1,535) square feet and being lot number three on a plan of S. C. Ellis, dated October 24th, 1876, and recorded with the deed of the said Episcopal city mission to the said George W. Meserve, dated October 2, 1876, and recorded with Suffolk deeds Lib., 1354, fol. 163, together with and also subject to all the rights and easements contained in the deed of said premises to me of even date herewith by the Episcopal city mission and being the same premises therein conveyed to me, and that conveyance is now made subject to
87 a mortgage on said store for nineteen thousand five hundred ($19,500) dollars made by me to said Episcopal city mission which mortgage with all interest thereon, the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom, subject also to the easements created in and by said mortgage in and upon the said lot. To have and to hold the granted premises with all the privileges and appurtenances thereto belonging to the said Lucy T. Brown and her heirs and assigns, to their own use and behoof forever. And I do hereby for myself, and my heirs, executors and administrators, covenant with the said grantee and her heirs and assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances, except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and her heirs and assigns forever, against the lawful claims and demands of all persons except as aforesaid. And for the consideration aforesaid, I, Esther M. Meserve, wife of the said George W. Meserve, do hereby release unto the grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof we the said George W. Meserve and Esther M. Meserve hereunto set our hands and seals this first day of March in the year one thousand eight hundred and seventy-seven.

GEORGE W. MESERVE.
ESTHER M. MESERVE.

And each a seal.

The word "city" was interlined on first page before signing.

Signed and sealed in presence of—
WILLIAM S. LELAND.
CARRIE K. NICKERSON.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

88 MARCH 20, 1877.

Then personally appeared the above-named George W. Meserve and acknowledged the foregoing instrument to be *my* free act and deed before me—

WILLIAM S. LELAND,
Justice of the Peace.

MARCH 20, 1877, at three o'clock and twenty minutes p. m.

Received, entered, and examined.
Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, Lib. 1368, fol. 150.
Attest: THOS. F. TEMPLE, *Reg.*

(Endorsed:) Complainants' Exhibit A 1 for identification, W. V. K.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Thomas F. Temple, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is the register of deeds for and within said county, duly commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify copies and acknowledgment of deeds of conveyances for lands, tenements, and hereditaments lying and being in said county; that he was at the time of taking the affidavit, proof,
or acknowledgment hereto annexed such register of deeds;
89 that due faith and credit are and ought to be given to his
official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston,
[SEAL.] in said county and Commonwealth, this twenty-fifth day of October, A. D. 1887.

JOS. A. WILLARD, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS:

I, Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk and hath the keeping of the files, records, and proceedings of said court within and for said county; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.] LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

90 EXHIBIT A "2" FOR IDENTIFICATION. W. V. K.

Whereas, George W. Meserve, did by mortgage deed, dated March 1, 1877, and recorded with Suffolk deeds Libro 1368 folio 14 convey the premises hereinafter described to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, and whereas, in and by said mortgage deed the grantee therein named, or its assigns, were authorized and empowered, upon any default in the performance or observance of the condition of said mortgage to sell the said premises, with all improvements that might be thereon, at public auction in the city of Boston first publishing a notice as therein required and to convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee-simple, and whereas, there has been such default, and notice has been published and a sale has been made, as will more particularly appear in and by the affidavit hereto to be subjoined.

Now, therefore know all men that the said Episcopal city mission by virtue and in execution of the power contained in said mortgage deed as aforesaid and of every other power it hereto enabling and in consideration of the sum of fourteen thousand dollars to it paid by said corporation, the Episcopal city mission and said George W. Meserve by said corporation my attorney for the same consideration joining herein, do hereby grant, bargain, sell and convey unto the said Episcopal city mission, all and singular the premises conveyed by the aforesaid mortgage deed, the said premises being described in said deed as follows.

A certain lot of land lying on Purchase street, in said Bos-
91 ton, and bounded and described as follows viz., northwesterly on said Purchase street twenty-four $\frac{86}{100}$ feet, southwesterly on other land of said corporation on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{40}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-

five $\frac{6}{100}$ feet, and northeasterly on other land of grantor on a straight line running to and through the center of the brick partition wall, sixty-one $\frac{59}{100}$ feet, containing fifteen hundred and thirty-five (1,535) square feet, and being lot number three on a plan of S. C. Ellis, dated 24 October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2 October, 1876, and recorded with Suffolk Deeds 1354, fol. 163, with all the rights and easements thereto belonging and especially with all rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan also, with all rights of light and air and passage in a strip of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises being lot number four on said plan and said strip extends the whole width of said lot number four. It is provided that the brick walls on the two sides of the granted premises shall be party walls in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding and any other usual rights forever. Subject to the rights and easements set forth in said deed of said corporation to said Meserve and in his mortgage
92 of the adjoining estate to said corporation of even date with said deed.

To have and to hold the same to the said Episcopal city mission and its successors and assigns to their own use and behoof forever.

In witness whereof, the said Episcopal city mission has caused its corporate seal to be hereto affixed and the- presents to be executed in its behalf by Benjamin H. Paddock its president and John S. Blatchford, its treasurer hereto duly authorized and said George W. Meserve by said corporation his attorney sets his hand and seal this twelfth day of March in the year one thousand eight hundred and eighty-four.

EPISCOPAL CITY MISSION,
By BENJ. H. PADDOCK,
Its President, [SEAL.]
JNO. S. BLATCHFORD, *Its Treasurer.*
GEORGE W. MESERVE,
By the EPISCOPAL CITY MISSION, [SEAL.]
His Attorney,
By BENJ. H. PADDOCK, *President.*

Signed, sealed in presence of—
JNO. S. BLATCHFORD, *Treasurer.*

Nine words first erased and words ending "sets his hand and seal" first written in and the date written over erasure before signing.

FRANCIS V. BALCH.

The Episcopal city mission has no corporate seal other than the one above affixed.

Attest: JNO. S. BLATCHFORD, *Treasurer.*

93 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *March* 12, 1884.

Then personally appeared the above-named Benjamin H. Paddock, president, and John S. Blatchford, treasurer, of the Episcopal city mission, and acknowledged the foregoing instrument to be the free act and deed of said corporation and of said Meserve before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March 12th*, 1884, at 1 o'clock and 40 minutes p. m.
Received and entered with Suffolk deeds, Libro 1629, folio 566.
Attest: THOS. F. TEMPLE, *Register.*

Affidavit.

Benjamin H. Paddock, president, and John S. Blatchford, treasurer, of the Episcopal city mission, named in the foregoing deed, on oath depose and say that default has been made in the payment of the principal sum mentioned in the condition of the mortgage deed above referred to, the said principal sum not having been at the time when it became payable or at any time paid or tendered to any person authorized to receive the same, and that, pursuant to the provisions of said mortgage deed and to the requirements of the statutes of the Commonwealth of Massachusetts, we published on the eighth, fifteenth, and twenty-second days of February, A. D. 1884, in the Boston Daily Advertiser, and on the eight-, fifteenth, and twenty-first days of February, A. D. 1884, in the Boston Evening Transcript, newspapers published in the city of Boston aforesaid, notices, of which the following are true copies:

94 *Mortgagee's Sale of Real Estate.*

Under and by virtue of the power of sale contained in a certain mortgage deed given by George W. Meserve to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, dated March 1, 1877, and recorded with Suffolk deeds, L. 1368, f. 147, and for breach of the conditions of said mortgage and for purpose of foreclosing the same, will be sold at public auction, on the premises hereinafter described, on Saturday, the first day of March, A. D. 1884, at eleven o'clock a. m., all and singular the premises conveyed by said mortgage deed and therein bounded and described as follows, viz: A certain lot of land lying on Purchase street, in said Boston, and bounded and described as follows, viz: Northwesterly on said Purchase street twenty-four $\frac{86}{100}$ feet, southwesterly on other land of said corporation on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{40}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-five $\frac{6}{100}$ feet, and northeasterly on other land of grantor

on a straight line running to and through the center of the brick partition wall sixty-one $\frac{59}{100}$ feet, containing fifteen hundred and thirty-five (1,535) square feet and being lot number 3 on a plan of S. C. Ellis, dated 24th October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2d October, 1876, and recorded with Suffolk deeds, Lib. 1354, fol. 163, with all the rights and easements thereto belonging, and especially with all rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

95 Also with all rights of light and air and passage in a strip of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises, being lot number four on said plan, and said strip extends the whole width of said lot number four.

It is provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns, shall have all rights of using, extending, repairing, and rebuilding and any other usual rights forever—

Subject also to the rights and easements set forth in said deed of said corporation to said Meserve and in his mortgage of the adjoining estate to said corporation, of even date with said deed.

One thousand dollars to be paid by purchaser at time and place of sale; further terms at sale.

This notice is given in compliance with the provisions of chapter 181 of the public statutes.

EPISCOPAL CITY MISSION, *Mortgagee*,
By BENJ. H. PADDOCK, *President*,
JNO. S. BLATCHFORD, *Treasurer*.

Notice published in Boston Daily Advertiser.

96 *Mortgagee's Sale of Real Estate.*

Under and by virtue of —sale contained in a certain mortgage deed given by George W. Meserve to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, dated March 1, 1877, and recorded with Suffolk deeds, L. 1368, f. 147, and for breach of the conditions of said mortgage and for purpose of foreclosing the same, will be sold at public auction, on the premises hereinafter described, on Saturday, the first day of March, A. D. 1884, at eleven o'clock a. m., all and singular the premises conveyed by said mortgage deed and therein bounded and described as follows, viz:

A certain lot of land lying on Purchase street, in said Boston, and bounded and described as follows, viz: Northwesterly on said Purchase street twenty-four $\frac{86}{100}$ feet, southwesterly on other land of said corporation on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{40}{100}$ feet to the center of a four-foot passageway, southeasterly on the

center line of said passageway twenty-five $\frac{6}{100}$ feet, and northeasterly on other land of grantor on a straight line running to and through the center of the brick partition wall sixty-one $\frac{59}{100}$ feet, containing fifteen hundred and thirty-five (1,535) square feet and being lot number three on a plan of S. C. Ellis, dated 24th October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2d October, 1876, and recorded with Suffolk deeds, Lib. 1354, fol. 163, with all the rights and easements thereto belonging, and especially with all rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

97 Also with all rights of light and air and passage in a strip of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises, being lot number four on said plan, and said strip extends the whole width of said lot number four. It is provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns, shall have all rights of using, extending, repairing, and rebuilding and any other usual rights forever—

Subject also to the rights and easements set forth in said deed of said corporation to said Meserve and in his mortgage of the adjoining estate to said corporation, of even date with said deed.

One thousand dollars to be paid by purchaser at time and place of sale; further terms at sale.

This notice is given in accordance with the terms of said mortgage deed.

EPISCOPAL CITY MISSION, *Mortgagee,*
By BENJ. H. PADDOCK, *President,*
JNO. S. BLATCHFORD, *Treasurer.*

Notice published in Boston Evening Transcript.

98 And we further depose and say that, pursuant to said notices and at the time and place therein appointed, the said default still continuing, we sold the premises conveyed by said mortgage deed at public auction by Samuel Hatch & Co., duly licensed auctioneers, to the Episcopal city mission, above named, for the sum of fourteen thousand dollars, which amount was bid by the said Episcopal city mission and was the highest bid made therefor at said auction.

Witness our hands this twelfth day of March, A. D. 1884.

BENJ. H. PADDOCK, *President.*
JNO. S. BLATCHFORD, *Treasurer.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } ss:

BOSTON, *March* 12, 1884.

Then personally appeared the above-named John S. Blatchford,

treasurer, and Benjamin H. Paddock, president, and made oath that the foregoing statement by them subscribed is true before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March 12th*, 1884, at 1 o'clock and 40 minutes p. m.

Received and entered with Suffolk deeds, Libro 1629, folio 5, and reference made as by law required.

Attest: THOS. F. TEMPLE, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

CLERK'S OFFICE OF SUPERIOR COURT.

99 I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Francis V. Balch, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in said county and Commonwealth, this 24th day of Oct., A. D. 1887.

[SEAL.] JOS. A. WILLARD, *Clerk.*

Complainants' Exhibit A 2 for identification, W. V. K.

100 COMPLAINANTS' EXHIBIT A 3 FOR IDENTIFICATION. W. V. K.

BOSTON, *March* 12, 1884.

Episcopal city mission in acc't with mortgage on lot 3, estate in Purchase St.

1877.			
March 1.	Mortgage note; rate of int. specified, 6½....		$19,500 00
1884.			
March 12.	Interest on $19,500 for 7 yrs. 12 dys. at 6½..		8,914 75
	Taxes, repairs, commissions, & insurance.....	$2,739 05	
	Interest on same to March 12, '84, at 6	514 48	
			3,253 53
			$31,668 28
	Cr. by—		
March 1.	Rents in full to date.....	$6,525 25	
" 12.	⅓ of proceeds from sale of two $1,000 Hickory bonds.....	644 32	
	Net proceeds of sale of estate under foreclosure mort.....	13,924 00	
			21,093 57
	Balance due on note March 12, 1884.....		$10,574 71

101 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Francis V. Balch, before whom the annexed affidavit, proof, or acknowledgement was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledg-

ment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in said county and Commonwealth, this 24th day of October, A. D. 1887.

[SEAL.] JOS. A. WILLARD, *Clerk.*

102 COMPLAINANTS' EXHIBIT A 4 FOR IDENTIFICATION. W. V. K.

We hereby certify that on the twelfth day of March, in the year one thousand eight hundred and eighty-four, we were present and saw the Episcopal city mission, by its president, Benjamin H. Paddock, and its treasurer, John S. Blatchford, thereto duly authorized, said Episcopal city mission being the mortgagee named in a certain mortgage given by George W. Meserve to the Episcopal city mission, dated March 1, A. D. 1884, and recorded in Suffolk registry of deeds, Libro 1368, folio 147, make an open, peaceable, and unopposed entry on the premises described in said mortgage for the purpose, by them declared, of foreclosing said mortgage for breach of the condition thereof, the declaring at same time and place that said entry was made not waiving the benefit of the foreclosure sale already made under the power in said mortgage, but to confirm the same.

CHAS. F. BERRY.
HARRISON B. YOUNG.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *March* 12, 1884.

Then personally appeared the above-named Charles F. Berry and Harrison B. Young and made oath that the above certificate by them subscribed is true before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March 12th*, 1884—1 h. 40 m. p. m.

Received and entered with Suffolk deeds, Libro 1629, folio 562, and reference made as by law required.

Attest: THOS. F. TEMPLE, *Register.*

103 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S DEPARTMENT,
BOSTON, *October* 25, 1887.

I hereby certify that the attestation hereunto annexed is in due form and by the proper officer.

[SEAL.] In testimony of which I have hereunto affixed the seal of the Commonwealth.

HENRY B. PEIRCE,
Secretary of the Commonwealth.

COMPLAINANTS' EXHIBIT A 5 FOR IDENTIFICATION. W. V. K.

Suffolk registry of deeds; Thomas F. Temple, register.

COURT SQUARE, BOSTON, *Oct.* 24, 1887.

I hereby certify that the following is a true copy of the marginal endorsements on mortgage from George W. Meserve to the Episcopal city mission for nineteen thousand five hundred dollars and recorded with Suffolk deeds, Libro 1368, fol. 147:

"Meserve to Episcopal city mission. Ex. pass. & ass. of sale. Lib. 1629, pp. 562 & 568."

Attest: THOS. F. TEMPLE, *Reg.*

104 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Thomas F. Temple, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is the register of deeds for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify copies and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said county; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such register of deeds; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is certified and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, [SEAL.] in said county and Commonwealth, this twenty-fifth day of October, A. D. 1887.

JOS. A. WILLARD, *Clerk.*

105 COMMONWEALTH OF MASSACHUSETTS:

[SEAL.] I, Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk and hath the keeping of the files, records, and proceedings of said court within and for said county; that full faith

and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

106 COMPLAINANTS' EXHIBIT A 6.

Secured by mortgage of real estate in (3d store) Purchase St., Boston, to be recorded in Suffolk registry of deeds.

$19,500. MARCH 1ST, 1877.

For value received I, George W. Meserve, promise to pay to the Episcopal city mission or order the sum of nineteen thousand and five hundred dollars $\frac{00}{100}$ in three years from this date, with interest to be paid semi-annually at the rate of six and a half per centum per annum during said term and for such further time as said principal sum or any part thereof shall remain unpaid.

GEORGE W. MESERVE.

Signed in presence of—
WILLIAM HEDGE.

(Endorsed:) 1884, March 12. Rec'd on account of within note thirteen thousand nine hundred and twenty-four dollars ($13,924).

107 COMPLAINANTS' EXHIBIT B FOR IDENTIFICATION. W. V. K.

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts in consideration of nineteen thousand, five hundred dollars, paid by the Episcopal city mission, a corporation established under the laws of the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said corporation, a certain lot of land lying on Purchase street in said Boston and bounded and described as follows, viz: Northwesterly on said Purchase street, twenty-four $\frac{16}{100}$ feet, southwesterly, on other land of said grantor on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{59}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-four $\frac{19}{100}$ feet, and northeasterly on other land of said corporation on a straight line running to and through the center of the brick partition wall sixty-one $\frac{77}{100}$ feet. Containing fourteen hundred ninety-one (1,491) square feet, and being lot number fourteen on a plan of S. C. Ellis, dated 24th October 1876, and recorded with the deed of said corporation to said Meserve, dated 2nd, October, 1876, and recorded with Suffolk deeds Lib. 1354, fol. 163 with

all the rights and easements thereto belonging and especially with all the rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

108 It is hereby provided that the brick walls on the two sides of the granted premises shall be party-walls in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding and any other usual rights forever.

Being a part of the premises conveyed to me by deed of said corporation of even date herewith, and this mortgage is delivered to said corporation simultaneously with the delivery of said deed to me, to secure a part of the purchase-money. Subject also to the rights and easements set forth in said deed to me, and in my mortgage of the adjoining estate to said corporation of even date herewith.

To have and to hold, the granted premises with all the privileges and appurtenances thereto belonging, to the said Episcopal city mission, and its assigns to their use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators covenant with the grantee and its assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all encumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the grantee and its assigns forever against the lawful claims and demands of all persons, except as aforesaid.

Provided nevertheless, that if I or my heirs, executors administrators or assigns, shall pay unto the grantee or its assigns the sum of nineteen thousand, five hundred dollars in three years from this date with interest semi-annually at the rate of six and one-half per cent. per annum, and until such payment shall pay all taxes and assessments on the granted premises, shall keep the build-

109 ings thereon insured against fire in a sum not less than six thousand dollars for the benefit of the grantee and its assigns at such insurance office as it or they shall approve, and shall not commit or suffer any st-ip or waste of the granted premises, or any breach of any covenants herein contained—then this deed, as also one note of even date herewith, signed by me whereby I promise to pay to the grantee or order the said sum and interest at the times aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition the grantee or its assigns may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all improvements that may be thereon, at public auction in said city of Boston, first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said city of Boston and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee-

simple, and such sale shall forever bar me and all persons claiming under me from all right and interest in the granted premises whether at law or in equity. And out of the money arising from such sale the grantee or its assigns shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs, charges and expenses incurred or sustained by reason of any failure or default of me or my representatives to perform or fulfill the condition of this deed, rendering the surplus if any, to me or my heirs or assigns.

And it is agreed that the grantee or its assigns, or any
110 person or persons in its or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase-money, and that, until default in the performance in the condition of this deed, I and my heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof. And I do hereby for myself and my heirs and assigns further covenant with the grantee and its assigns that on such sales, I, and they will upon request, execute and deliver such further deeds and instruments as may be necessary or proper to confirm said sale and to vest the title to the premises sold in the purchaser thereof. And for the consideration aforesaid, I, Esther M. Meserve, wife of said George W. Meserve, do hereby release unto the grantee all right of or to both dower and homestead in the granted premises.

In witness, whereof, we, the said George W. Meserve and Esther M. Meserve hereto set our hands and seals this first day of March, in the year one thousand eight hundred and seventy-seven.

GEORGE W. MESERVE. [SEAL.]
ESTHER M. MESERVE. [SEAL.]

Signed, sealed, and delivered in presence of—

WILLIAM HEDGE,
To G. W. M.
JOHN H. ROLFE,
Witness to Esther M. Meserve.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

MARCH 20TH, 1877.

Then personally appeared the within-named George W. Meserve and acknowledged the foregoing instrument to be his free act and deed, before me—

WILLIAM HEDGE,
Justice of the Peace.

BOSTON, *March 20th*, 1877—3h. 20m. p. m.

Received and entered with Suffolk deeds, Libro 1368, folio 148.
Attest:

THOS. F. TEMPLE, *Register.*

111 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that William Hedge, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace: that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, [SEAL.] in said county and Commonwealth, this 24th day of Oct., A. D. 1887.

JOS. A. WILLARD, *Clerk.*

112 COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S OFFICE,
BOSTON, *October* 25, 1887.

I hereby certify that the attestation hereunto annexed is in due form and by the proper officer.

In testimony of which I have hereunto affixed the seal of the Commonwealth.

[SEAL.] HENRY B. PEIRCE,
Secretary of the Commonwealth.

113 COMPLAINANTS' EXHIBIT B I FOR IDENTIFICATION. W. V. K.

Meserve
to
Brown.

Lib. 1368, fol. 151.

Know all men by these presents, that I, George W. Meserve, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts in consideration of thirty thousand dollars, to me paid by Lucy

T. Brown, wife of John B. Brown, of Chicago, Cook county, Commonwealth of Illinois, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Lucy T. Brown, all that lot of land on Purchase street in said Boston, with a new brick store thereon, bounded and described as follows viz: Northwesterly on said Purchase street, twenty-four and $\frac{16}{100}$ (24.16) feet, southwesterly on land of the Episcopal city mission on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one and $\frac{59}{100}$ (61.59) feet to the center of a four-foot passageway; southeasterly on the center line of said passageway, twenty-four and $\frac{19}{100}$ (24.19) feet, and northeasterly on other land of the said Episcopal city mission on a straight line running to and through the center of the brick partition wall sixty-one and $\frac{77}{100}$ (61.77) feet, containing fourteen hundred and ninety-one (1491) square feet and being lot number four (4) on a plan of S. C. Ellis, dated 24th of October, 1876, and recorded with the deed of said Episcopal city mission to George W. Meserve, dated October 2nd, 1876, and recorded with Suffolk Deeds, Libro 1354 fol. 163, together with and also subject to all the rights and easements contained in the deed of said premises to me of even date herewith by the Episcopal city mission and being the same premises therein conveyed to me, and this conveyance is now made *made* subject to a mortgage on said store for nineteen thousand, five hundred dollars (19,500) made by me to said Episcopal city mission, which mortgage with all interest thereon the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom. Subject also to the easements created in and by said mortgage in and upon the said lot. To have and to hold the granted *p*premises with all the privileges and appurtenances thereto belonging, to the said Lucy T. Brown and her heirs and assigns to their own use and behoof forever. And I do hereby for myself and my heirs executors and administrators covenant with the said grantee and her heirs and assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances except as aforesaid, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and her heirs and assigns forever against the lawful claims and demands of all persons except as aforesaid. And for the consideration aforesaid, I, Esther M. Meserve, wife of the said George W. Meserve, do hereby release unto the grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

114

In witness whereof we, the said George W. Meserve and Esther M. Meserve hereunto set our hands and seals this first day of March in the year one thousand eight hundred and seventy-seven.

GEORGE W. MESERVE AND
ESTHER M. MESERVE.

And each a seal.

The words to the center of were interlined on first page before signing.

Signed, sealed in presence of—
WILLIAM S. LELAND.
CARRIE R. NICKERSON.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

MARCH 20TH, 1877.

Then personally appeared the above-named George W. Meserve and acknowledged the foregoing instrument to be his free act
115 and deed before me—

WILLIAM S. LELAND,
Justice of the Peace.

March 20th, 1877, at three o'clock and twenty minutes p. m. Received, entered, and examined.
Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the record of deeds for the county of Suffolk, Lib. 1368, fol. 151.
Attest: THOS. F. TEMPLE, *Reg.*

116 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

CLERK'S OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record with a seal which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Thomas F. Temple, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed is the register of deeds for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify copies and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments, lying and being in said county; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such register of deeds; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is certified and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court at Boston,
[SEAL.] in said county and Commonwealth, this twenty-fifth day of October, A. D. 1887.

JOS. A. WILLARD, *Clerk.*

117 COMMONWEALTH OF MASSACHUSETTS: [SEAL.]

I, Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk, and hath the keeping of the files, records, and proceedings of said court within and for said county; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

118 COMPLAINANTS' EXHIBIT B 2 FOR IDENTIFICATION. W. V. K.

Whereas, George W. Meserve, did by mortgage deed, dated March 1, 1877, and recorded with Suffolk deeds Libro 1368 folio 14 convey the premises hereinafter described to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, and whereas, in and by said mortgage deed the grantee therein named, or its assigns, were authorized and empowered, upon any default in the performance or observance of the condition of said mortgage to sell the said premises, with all improvements that might be thereon, at public auction in the city of Boston first publishing a notice as therein required and to convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee-simple, and whereas, there has been such default, and notice has been published and a sale has been made, as will more particularly appear in and by the affidavit hereto to be subjoined.

Now, therefore know all men that the said Episcopal city mission by virtue and in execution of the power contained in said mortgage deed as aforesaid and of every other power it hereto enabling and in consideration of the sum of fourteen thousand five hundred dollars to it paid by said corporation, the Episcopal city mission doth and said George W. Meserve by said corporation as his attorney for the consideration above acknowledged as aforesaid joining herein doth hereby grant, bargain, sell and convey unto the said Episcopal city mission, all and singular the premises conveyed by the aforesaid mortgage deed, the said premises being described in said deed as follows.

A certain lot of land lying on Purchase street, in said Bos-
119 ton, and bounded and described as follows viz., northwesterly on said Purchase street, twenty-four $\frac{16}{100}$ feet southwesterly on other land of said grantor on a straight line running in part through the center of the brick partition wall, and in part in the same course, sixty-one $\frac{59}{100}$ feet to the center of a four-foot passage-

way southeasterly, on the center line of said passageway, twenty-four $\frac{19}{100}$ feet, and northeasterly on the other land of said corporation on a straight line running to and through the center of the brick partition wall, sixty-one $\frac{17}{100}$ feet, containing fourteen hundred and ninety-one (1,491) square feet, and being lot number four on a plan of S. C. Ellis, dated 24th October, 1876, and recorded with the deeds of said corporation to said Meserve, dated 2nd October, 1876, and recorded with Suffolk deeds Lib. 1354 fol. 163 with all the rights and easements thereto belonging and especially with all rights in said four-foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan. It is provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns shall have all rights of using, extending, repairing and rebuilding, and any other usual rights forever. Subject also to the rights and easements set forth in said — of said corporation to said Meserve, and in said Meserve's mortgage of the adjoining estate to said corporation of even date with said deed.

To have and to hold the same to the said Episcopal city mission and its successors and assigns to their own use and behoof forever.

In witness whereof the said Episcopal city mission has
120 caused its corporate seal to be hereto affixed and these presents to be executed in its behalf by Benjamin H. Paddock, its president and John S. Blatchford, its treasurer, duly authorized and said George W. Meserve by his attorney hereby sets his hand and seal this twelfth day of March, in the year one thousand eight hundred and eighty-four.

EPISCOPAL CITY MISSION,
By BENJ. H. PADDOCK,
Its President, [SEAL.]
JNO. S. BLATCHFORD, *Its Treasurer,*
GEORGE W. MESERVE,
By the EPISCOPAL CITY MISSION, [SEAL.]
His Attorney,
By BENJ. H. PADDOCK, *Its President.*
JNO. S. BLATCHFORD, *Its Treasurer.*

Signed and sealed in presence of—ten words first erased and words ending "sets his hand and seal" first written in and the date written over erasure before signing—
FRANCIS V. BALCH.

The Episcopal city mission has no corporate seal other than the one above affixed.
Attest: JNO. S. BLATCHFORD, *Treasurer.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

BOSTON, *March* 12, 1884.

Then personally appeared the above-named Benjamin H. Paddock, president, and John S. Blatchford, treasurer, of said Episcopal

city mission, and acknowledged the foregoing instrument to
121 be the free act and deed of said corporation and of said Meserve before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March 12th*, 1884.

At 1 o'clock and 40 minutes p. m. received and entered with Suffolk deeds, Libro 1629, folio 572.
Attest: THOS. F. TEMPLE, *Register.*

Affidavit.

We, Benjamin H. Paddock, president, and John S. Blatchford, treasurer, of the Episcopal city mission named in the foregoing deed, on oath depose and say that default has been made in the payment of the principal sum mentioned in the condition of the mortgage deed above referred to, the said principal sum not having been at the time it became payable or at any time paid or tendered to any person authorized to receive the same, and that pursuant to the provisions of said mortgage deed and to the requirements of the statutes of the Commonwealth of Massachusetts we published on the eighth, fifteenth, and twenty-second days of February, A. D. 1884, in the Boston Daily Advertiser, and on the eighth, fifteenth, and twenty-first days of February, A. D. 1884, in the Boston Evening Transcript, newspapers published in the city of Boston aforesaid, notices of which the following are true copies:

122 *Mortgagee's Sale of Real Estate.*

Under and by virtue of the power of sale contained in a certain mortgage deed given by George W. Meserve to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, dated March 1, 1877, and recorded with Suffolk county deeds, L. 1368, f. 148, and for breach of the condition of said mortgage and for the purpose of foreclosing the same, will be sold at public action, on the premises hereinafter described, on Saturday, the first day of March, A. D. 1884, at eleven o'clock a. m., all and singular the premises conveyed by said mortgage deed and therein bounded and described as follows, viz:

A certain lot of land lying on Purchase street, in said Boston, and bounded and described as follows, viz: Northwesterly on said Purchase street twenty-four $\frac{16}{100}$ feet, southwesterly on other land of said grantor on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{59}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-four $\frac{19}{100}$ feet, and northeasterly on other land of said corporation on a straight line running to and through the center of the brick partition wall sixty-one $\frac{77}{100}$ feet, containing fourteen hundred and ninety-one (1,491) square feet and being lot number four on a plan of S. C. Ellis,

dated 24th October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2d October, 1876, and recorded with Suffolk deeds, Lib. 1354, fol. 163, with all the rights and easements thereto belonging, and especially with all rights in said four-
123 foot passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan.

It is provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns, shall have all rights of using, extending, repairing, and rebuilding and any other usual rights forever—

Subject also to the rights and easements set forth in said deed of said corporation to said Meserve and in said Meserve's mortgage of the adjoining estate to said corporation of even date with said deed; one thousand dollars to be paid by purchaser at time and place of sale; further terms at sale.

This notice is given in compliance with the provisions of chapter 181 of the public statutes.

EPISCOPAL CITY MISSION, *Mortgagee*,
By BENJ. H. PADDOCK, *President*,
JNO. S. BLATCHFORD, *Treasurer*.

Notice published in Boston Daily Advertiser.

124 *Mortgagee's Sale of Real Estate*

Under and by virtue of the power of sale contained in a certain mortgage deed given by George W. Meserve to the Episcopal city mission, a corporation duly established by law in the Commonwealth of Massachusetts, dated March 1, 1877, and recorded with Suffolk county deeds, L. 1368, f. 148, and for breach of the condition of said mortgage and for the purpose of foreclosing the same, will be sold, at public auction on the premises hereinafter described, on Saturday, the first day of March, A. D. 1884, at eleven o'clock a. m., all and singular the premises conveyed by said mortgage deed and therein bounded and described as follows, viz:

A certain lot of land lying on Purchase street, in said Boston, and bounded and described as follows, viz: Northwesterly on said Purchase street twenty-four $\frac{16}{100}$ feet, southwesterly on other land of said grantor on a straight line running in part through the center of the brick partition wall and in part in the same course sixty-one $\frac{59}{100}$ feet to the center of a four-foot passageway, southeasterly on the center line of said passageway twenty-four $\frac{19}{100}$ feet, and northeasterly on other land of said corporation on a straight line running to and through the center of the brick partition wall sixty-one $\frac{77}{100}$ feet, containing fourteen hundred and ninety-one (1,491) square feet and being lot number four on a plan of S. C. Ellis, dated 24th October, 1876, and recorded with the deed of said corporation to said Meserve, dated 2d October, 1876, and recorded with Suffolk deeds, Lib. 1354, fol., 163, with all the rights and easements thereto

belonging, and especially with all rights in said four-foot
125 passageway leading northeasterly to a five-foot passageway and in said five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan. It is provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns, shall have all rights of using, extending, repairing, and rebuilding and any other usual rights forever—

Subject also to the rights and easements set forth in said deed of said corporation to said Meserve and in said Meserve's mortgage of the adjoining estate to said corporation of even date with said deed; one thousand dollars to be paid by purchaser at time and place of sale; further terms at sale.

This notice is given in accordance with the terms of said mortgage deed.

EPISCOPAL CITY MISSION, *Mortgagee*,
By BENJ. H. PADDOCK, *President*,
JNO. S. BLATCHFORD, *Treasurer*.

Notice published in Boston Evening Transcript.

126 And we further depose and say that pursuant to said notices and at the time and place therein appointed, the said default still continuing, we sold the premises conveyed by said mortgage deed, at public auction, by Samuel Hatch & Co., duly licensed auctioneers, to the Episcopal city mission, above named, for the sum of fourteen thousand five hundred dollars, which amount was bid by the said Episcopal city mission and was the highest bid made therefor at said auction.

Witness our hands this twelfth day of March, A. D. 1884.

BENJ. H. PADDOCK, *President*.
JNO. S. BLATCHFORD, *Treasurer*.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

BOSTON, *March* 12, 1884.

Then personally appeared the above-named John S. Blatchford, treasurer, and Benjamin H. Paddock, president, and made oath that the foregoing statement by them subscribed is true, before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March 12th*, 1884, at 1 o'clock and 40 minutes p. m.

Received and entered with Suffolk deeds, Libro 1629, folio 5, and reference made as by law required.

Attest: THOS. F. TEMPLE, *Register*.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

CLERK'S OFFICE OF SUPERIOR COURT.

127 I, Jos. A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and

within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Francis V. Balch, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyance, for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in said county and Commonwealth, this 24th day of Oct., A. D. 1887.

[SEAL.] JOS. A. WILLARD, *Clerk.*

128 COMPLAINANTS' EXHIBIT B 3 FOR IDENTIFICATION. W. V. K.

BOSTON, *March* 12, 1884.

Episcopal city mission in acc't with mortgage on lot 4, estate in Purchase St.

1877.			
March 1.	Mortgage note, rate of int. specified, 6½....		$19,500
1884.			
March 12.	Interest on $19,500 for 7 yrs. 12 dys. at 6½..		8,914 75
	Taxes, repairs, commissions, & insurance.....	$2,739 05	
	Interest on same to March 12, '84, at 6.....	514 48	
			3,253 53
			$31,668 28
	Cr. by—		
March 1.	Rents in full to date.....	$6,525 25	
" 12.	⅓ of proceeds of sale of two $1,000 Hickory bonds.....	644 32	
	Net proceeds of sale of estate under foreclosure mort.....	14,424	
			21,593 57
	Balance due on note March 12, 1884.....		$10,074 71

129 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

CLERK'S OFFICE OF SUPERIOR COURT.

I, Joseph A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Francis V. Balch, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is a justice of the peace for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of the Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said Commonwealth; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such justice of the peace; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, [SEAL.] in said county and Commonwealth, this twenty-fourth day of October, A. D. 1887.

JOS. A. WILLARD, *Clerk.*

130 COMPLAINANTS' EXHIBIT B 4 FOR IDENTIFICATION. W. V. K.

We hereby certify that on the twelfth day of March, in the year one thousand eight hundred and eighty-four, we were present and saw the Episcopal city mission, by its president, Benjamin H. Paddock, and its treasurer, John S. Blatchford, thereto duly authorized, said Episcopal city mission being the mortgagee named in a certain mortgage given by George W. Meserve to the Episcopal city mission, dated March, A. D. 1877, and recorded in Suffolk registry of deeds, Libro 1368, folio 148, make an open, peaceable, and unopposed entry on the premises described in said mortgage for the purpose by them declared of foreclosing said mortgage for breach of the condition thereof, they declaring at the same time and place that said entry was made not waiving the benefit of foreclosure sale already made under the power in said mortgage, but to confirm the same.

CHAS. F. BERRY.
HARRISON B. YOUNG.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *March* 12, 1884.

Then personally appeared the above-named Charles F. Berry and Harrison B. Young and made oath that the above certificate by them subscribed is true before me—

FRANCIS V. BALCH,
Justice of the Peace.

BOSTON, *March* 12, 1884—1 h. 40 m. p. m.

Received and entered with Suffolk deeds, Libro 1629, folio 561, and reference made as by law required.

Attest: THOS. F. TEMPLE, *Register.*

131 COMPLAINANTS' EXHIBIT B 5 FOR IDENTIFICATION. W. V. K.

COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S DEPARTMENT,
BOSTON, *October* 25, 1887.

I hereby certify that the attestation hereto annexed is in due form and by the proper officer.

In testimony of which I have hereunto affixed the seal [SEAL.] of the Commonwealth.

HENRY B. PEIRCE,
Secretary of the Commonwealth.

COMPLAINANTS' EXHIBIT B 5 FOR IDENTIFICATION. W. V. K.

Suffolk registry of deeds; Thos. F. Temple, register.

COURT SQUARE, BOSTON, *Oct.* 24, 1887.

I hereby certify that the following is a true copy of the marginal endorsements on mortgage from George W. Meserve to the Episcopal city mission for nineteen thousand five hundred dollars and recorded with Suffolk deeds, Libro 1368, folio 148:

"Meserve to Episcopal city mission. Ev. pass. & att. at sale. Lib. 1629, pp. 561 & 574."

Attest: THOS. F. TEMPLE, *Reg.*

132 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

CLERK'S OFFICE OF SUPERIOR COURT.

I, Joseph A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record, with a seal, which is hereto affixed, the record and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Thomas F. Temple, before whom the annexed affidavit, proof, or acknowledgment was taken or subscribed, is the

register of deeds for and within said county, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify copies and acknowledgments of deeds of conveyances for lands, tenements, and hereditaments lying and being in said county; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such register of deeds; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is certified and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in [SEAL.] said county and Commonwealth, this twenty-fifth day of October, A. D. 1887.

JOS. A. WILLARD, *Clerk.*

133 [SEAL.] COMMONWEALTH OF MASSACHUSETTS:

I, Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Joseph A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk and hath the keeping of the files, records, and proceedings of said court within and for said county; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty.

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

COMPLAINANTS' EXHIBIT B 6. W. V. K.

$19,500. MARCH 1ST, 1877.

For value received I, George W. Meserve, promise to pay the Episcopal city mission or order the sum of nineteen thousand and five hundred dollars $\frac{00}{100}$ in three years from this date, with interest to be paid semi-annually at the rate of six & a half per centum per annum during said term and for such further time as said principal sum or any part thereof shall remain unpaid.

GEORGE W. MESERVE.

Signed in presence of—
WILLIAM HEDGE.

(Endorsed:) 1884, March 12. Rec'd on account of within note fourteen thousand four hundred and twenty-four dollars, secured by mortgage of real estate in (4th store) Purchase St., Boston, to be recorded in Suffolk registry of deeds.

134 COMPLAINANTS' EXHIBIT D. W. V. K.

"On motion it was then voted to proceed to the election of officers for the ensuing year.

A ballot being taken, the following officers were unanimously elected:

Executive committy: Rev. Dr. Phillip Brooke, Rev. Dr. Frederick Courtny, Rev. George J. Prescott, Rev. John Wright, Rev. W. H. Monroe, of the clergy; Dr. George C. Shattuck, R. T. Pain, Jr., J. S. Blatchford, J. W. D. French, Frank H. Appleton, H. W. Nelson.

On another ballot J. S. Blatchford, as treasurer, H. W. Nelson, as clerk, were duly elected."

I, Chas. W. Dexter, secretary of the Episcopal city mission, do hereby certify that I am the secretary of the said corporation and by its by-laws entrusted with the keeping of its records, and that the foregoing is a full, true, and complete copy from the records of the annual meeting of the said corporation of the Episcopal city mission held on the fourteenth day of November, 1883, at the
135 church association rooms, number 5 Hamilton place, in the city of Boston, in the State of Massachusetts, at 3 p. m.

I do further certify that the said corporation has no corporate seal other than the one hereto affixed.

Given under my hand and the seal of said corporation this 25th day of October, 1887.

[Seal of the Episcopal City Mission.]

CHARLES W. DEXTER,
Secretary of said Corporation.

COMPLAINANTS' EXHIBIT E. W. V. K.

"Voted, That the president and treasurer be, and they hereby are, authorized to take such steps as they can deem expedient, by foreclosure sale or otherwise, to realize the mortgages held by this corporation on Purchase street."

I, Chas. W. Dexter, do hereby certify that I am the secretary of the Episcopal city mission and by law entrusted with the custody of its records; that the foregoing is a full, true, and complete copy from its records of a special meeting of the executive committee of the said corporation held on the fourth day of February, A. D. 1884, at the rooms of the church association, number 5 Hamilton place, in the city of Boston, in the State of Massachusetts, at 12 m.

I do further certify that the said corporation has no corporate seal other than that hereto affixed.

136 Given under my hand and the seal of said corporation this 25th day of October, 1887.

[Seal of the Episcopal City Mission.]

CHARLES W. DEXTER.

I, William V. Kellen, of Boston, Massachusetts, special examiner appointed by the circuit court of the United States for the northern district of Illinois to take depositions in the case of The Episcopal City Mission *vs.* Lucy T. Brown and John B. Brown, in chancery, as set forth in above caption under rule sixty-seven, as amended, do hereby certify that John S. Blatchford, Thomas F. Temple, Francis V. Balch, William Hedge, John H. Rolfe, and Warren K. Blodgett, the above-named deponents, appeared before me, on the twenty-fifth, twenty-sixth, and twenty-ninth days of October, A. D. 1887, and on the second day of November, A. D. 1887, at the offices of Messrs. Balch and Rackemann, by agreement of counsel, at 39 Court street, in said Boston, and they, having been by me first sworn to testify the whole truth relative to the issue in the cause in the caption named, gave the foregoing depositions, by them subscribed; that said depositions were by agreement taken down by a stenographer and were by him reduced to typewriting and carefully read by said deponents and then subscribed by them as and for their depositions in my presence; that said depositions were taken at the request of the complainants in the cause aforesaid; that said deponents were material and necessary witnesses in said cause and live within the district of Massachusetts a greater distance than one hundred miles, and the place of taking said deposition is more than one hundred
137 miles from the place of trial of the cause for which the depositions were taken.

I also certify that Complainants' Exhibits A, A 1 to A 6, inclusive; B, B 1 to B 6, inclusive; D and E were annexed by me to said depositions. I further certify that I am not of counsel nor attorney to either of the parties in the cause in and for which the said depositions were taken nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of November, A. D. eighteen hundred and eighty-seven.

WILLIAM V. KELLEN,
Special Examiner.

(Endorsed:) Filed Nov. 12, 1887. Wm. H. Bradley, clerk. Opened Nov. 25, 1887, for def'ts' sol.

138 *Testimony Taken Before Walter Rogers, Special Examiner, at Boston, Mass.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN *et al.*
} In Chancery.

To the said defendants and to their solicitors, Messrs. Osborn & Lynde.

GENTLEMEN: Please take notice that on the 3rd, 4th, & 5th days of October, 1888, at eleven o'clock in the morning, the complainant

will proceed to take testimony in the above-entitled cause before William V. Kellen, Esq., heretofore appointed special examiner in this cause, at the office of Balch & Rackemann, 39 Court street, Boston, Massachusetts, and will continue to take such testimony from day to day until completed.

Chicago, September 27th, 1888.

GEORGE BURRY,
Solicitor for Complainant-.

Above notice satisfactory.

OSBORNE & LYNDE,
Solicitors for Defendants.

139 William V. Kellen being absent, by agreement the depositions are taken before Walter Rogers with like effect.

I. R. CLARK,
GEORGE BURRY, *Sol'r-.*

In pursuance of the foregoing stipulation the parties appeared, be their solicitors, George Burry and I. R. Clark, before me, at the office of Balch & Rackemann, 39 Court street, Boston, on the third, fourth, and fifth days of October, 1888, at eleven o'clock, and the following depositions were taken to be read in evidence in the above-entitled causes.

WALTER ROGERS,
Special Examiner.

ROBERT TREAT PAINE, produced and sworn on behalf of the Episcopal City Mission *et al.*, was examined in chief by Mr. Burry as follows:

Q. 1. Please state your name, age, occupation, and place of residence.

A. Robert Treat Paine; fifty-two years of age; 6 Joy street, Boston, is my residence; I am a lawyer.

Q. 2. What, if any, connection have you with the Episcopal city mission of Boston?

A. I am and have been a member of the executive committee for a great many years.

Q. 3. As a member of the executive committee did you have any transactions with John B. Brown, the defendant in this case, relating to certain stores on Purchase St., in this city, on which your mission had mortgages?

A. I did.

140 Q. 4. Did you receive any letters from him relating to it?

A. Yes.

Q. 5. Are you acquainted with the handwriting and signature of John B. Brown?

A. I am.

Q. 6. How did you become acquainted with it?

A. I have seen him write it in my office many times.

Q. 7. And received letters from him?

A. And have received letters from him.

Q. 8. Please examine the letters dated Sept. 29, Oct. 1, Nov. 3, Dec. 19, 1877, Feb. 25, March 8, March 16, March 23, April 11, April 23, April 27, May 31, 1878, and Oct. 16, 1879, and marked respectively Complainants' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, and state in whose handwriting they are.

A. They are in the handwriting of John B. Brown.

Q. 9. State whether they were received by you from John B. Brown.

A. They were.

Q. 10. State whether you wrote any reply to his letter of April 11, 1878.

A. I did.

Q. 11. Have you a copy of it?

A. This is a copy of it.

Q. 12. Will you attach it to your deposition and mark it Complainants' Exhibit 14?

A. I will.

Q. 13. State whether you wrote a reply to Brown's letters of March 16 and 23, 1878.

A. I did.

Q. 14. Will you attach copies thereof to your deposition marking them respectively Complainants' Exhibits 15 and 16?

A. I will.

Q. 15. Do you know a Mr. A. Blume?

A. Yes.

Q. 16. Did you ever have any negotiations with him concerning these estates?

A. Yes.

141 Q. 17. Were such negotiations concerning the turning over of the property by Brown to the mission?

Objected to as leading and as being matters and things not connected wtih the defendants or either of them.

A. They were.

Q. 18. Did you ever have any conversation with Mr. Brown concerning Mr. Blume's connection with the matter?

A. Yes; I think I did.

Q. 19. What was Mr. Blume's connection with it as ascertained from Mr. Brown?

Objected to.

A. Mr. Blume acted as Mr. Brown's lawyer.

Q. 20. State whether you ever made any arrangement on behalf of the mission with Mr. Brown or any person representing him as to the mission's receiving possession from Mr. Brown of the Purchase St. stores.

A. I think not. The entry that we made was under the mortgages in the enforcement of our rights in the usual course of proceedings in Massachusstts to take possession of mortgaged property for breach of the conditions.

Last paragraph of answer objected to as irresponsive.

Q. 21. What was the negotiation which you had with Blume?

Objected to.

A. Mr. Blume urged me to accept for the Episcopal city mission deeds from Mr. and Mrs. Brown of their equity in the Purchase-street estates, the deeds containing clauses which relieved Mr. and Mrs. Brown from all further liability on the mortgages. This offer I refused to consider.

Q. 22. Examine the copy of the receipt dated Dec. 3, 1877,
142 marked Complainants' Exhibit 17, and state whether it is a true copy of the original.

A. I wrote the original of which this is a copy, and I have no doubt that this is an accurate copy and was compared by me with the original.

Mr. BURRY: Mr. Clark, I now call upon you to produce, in pursuance of the notice annexed, heretofore served upon the solicitors for the defendants in this cause, the papers therein mentioned.

Mr. CLARK: The notice to produce has not been forwarded to me among the rest of the papers that I can find. I will at once confer with counsel in Chicago and endeavor to comply with it.

Mr. BURRY: I now offer in evidence the papers marked, in connection with the testimony of this witness, Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, inclusive.

Mr. CLARK: Those are objected to as incompetent and as not being all the correspondence between the parties.

Adjourned till 11.30 a. m., Friday, Oct. 5, 1888.

BOSTON, *Oct. 5th*, 1888.

It is agreed, on comparison of Exhibit 17 with the original thereof, that it is a true copy.

Q. 23. Please examine the paper dated the 19th of March, 1877, signed by George W. Meserve, marked Complainants' Exhibit 35, and state whose signature that is?

A. It is signed by George W. Meserve.

Q. 24. Was Exhibit 35 made on the day it bears date?

A. I could not say.

Q. 25. Was it made about that time?

A. Yes; my impression is that all the papers were delivered simultaneously. My belief is that all the papers, the deeds
143 to Meserve, the mortgages back from Meserve to the Episcopal city mission, this bond from Brown to Meserve, and the assignment of the bond from Meserve to the Episcopal city mission, were all delivered simultaneously in my office.

Answer objected to.

Q. 26. At the same time with the deeds from Meserve to Brown?

Objected to.

A. With that I had nothing to do; I know nothing about the deeds from Meserve to Brown.

Q. 27. You are the Robert Treat Paine referred to in this correspondence as junior, are you?

A. I am.

Q. 28. When did you cease to be junior?

A. I dropped the junior from my name on the death of my cousin, senior of the name, in June, 1885.

Mr. BURRY: I will offer in evidence the paper marked Complainant's Exhibit 35.

Paper objected to.

Mr. CLARK: The correspondence called for in the notice to produce, dated September 27, 1888, arrived last night by mail, and I have here ready to produce, if counsel for complainants desires them in response to that notice, the following original letters from R. T. Paine, Jr., to John B. Brown, dated Nov. 5, 1877; Feb. 26, 1878; Feb. 27, 1878; March 6, 1878; (telegram), March 20, 1878; also original letters from John S. Blatchford to Brown, dated Jan. 31, 1881; March 16. 1881; March 26, 1881; March 29, 1881; (telegram), July 29, 1884; Aug. 20, 1884.

Mr. BURRY: Are these the only originals which you propose to produce?

144 Mr. CLARK: Those are the originals which I do produce, and they are all that I have here.

Mr. BURRY: I now offer in evidence the letters so produced and agree that copies thereof may be attached to this deposition in place of the originals, marked respectively Complainants' Exhibits 36 to 46, inclusive, on the agreement that, if requested, the originals shall be produced.

Cross-examination waived.

Signature waived by agreement.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN *et al.*

To the said defendants and their solicitors, Messrs. Osborne & Lynde:

You are hereby notified to produce on the taking of the testimony in this case on the 4th day of October, A. D. 1888, before Walter Rogers, Esq., in Boston, the original letters from R. T. Paine, Jr., to John B. Brown, dated as follows: November 5th, 1877; February 26th, 1878; February 27th, 1878; March 6th, 1878 (which is a telegram); March 20th, 1878; also letters written by the said Paine to the said Brown in reply to the said Brown's letters of March 8th, 1878; March 16th, 1878; April 11th, 1878; May 31st, 1878; June 13th, 1878, and October 16th, 1879.

Also the original letters written by John S. Blatchford to John B. Brown, dated as follows: January 31st, 1881; March 16th, 1881;

March 26th, 1881; March 29th, 1881 (which is a telegram);
145 June 10th, 1884; June 19th, 1884; July 3rd, 1884; July 29th, 1884, and August 20th, 1884.

Also the originals of any letters written by the said Paine or Blatchford or any other person on behalf of said mission to the said John B. Brown, dated between the 23rd March, 1878, and 27th April, 1878.

Also the originals of any other letters written by the said Paine or Blatchford or any other person on behalf of the said mission to John B. Brown or any other person on his behalf relating to the matters in controversy in this suit.

That in case of your failure so to do the complainant will introduce secondary evidence of the contents thereof respectively, if it see fit.

Chicago, September 27th, 1888.

GEORGE BURRY,
Solicitor for Complainant.

Received copy of the above notice this 27th day of September, 1878.

OSBORN & LYNDE,
Solicitor for Defendants.

Name changed to Walter Rogers.
GEORGE BURRY.
I. R. CLARK.

146 BOSTON, *Oct. 4th*, 1888.

JOHN S. BLATCHFORD, produced and sworn on behalf of the Episcopal City Mission *et al.*, was examined in chief by Mr. BURRY as follows:

Q. 1. Your full name is John S. Blatchford?
A. It is.
Q. 2. You are the John S. Blatchford who has already testified in this case?
A. I am.
Q. 3. I wish you to look at Complainants' Exhibit E and state whether the mortgages referred to as held by the mission on Purchase St. refer to the mortgages mentioned in the pleadings in this cause.
A. They do.
Q. 4. I wish you would examine the printed copy of the by-laws of the Episcopal city mission, now handed you and marked Complainants' Exhibit 17½, and state whether that is a true copy of the by-laws in force since Nov. 28, 1874.
A. It is.
Q. 5. Do you know the defendant John B. Brown?
A. Yes.
Q. 6. And are acquainted with his handwriting and signature?
A. Yes.
Q. 7. Examine the letter dated June 13, 1878, marked Complain-

ants' Exhibit 18, and state in whose handwriting the body and signature of it is.

A. I should say it was in that of Mr. Brown's.

Q. 8. Examine the letter dated March 28, 1881, marked Complainants' Exhibit 19, and state in whose handwriting the signature is.

A. I should say that was Mr. Brown's signature.

Q. 9. Examine the letters dated May 16, May 30, and July 26, 1881, marked respectively Complainants' Exhibits 20, 21, and 22, and state whose signature is thereto attached.

A. I believe it to be Mr. Brown's.

Q. 10. Examine the letters dated Feb. 18, Feb. 25, Oct. 16, and Nov. 17, 1882, marked respectively Complainants' Exhibits
147 23, 24, 25, and 26, and state whose signature is to each of them.

A. I believe the signature in each case to be that of Mr. Brown.

Q. 11. Examine the letter dated May 24, 1884, marked Complainants' Exhibit 27, and state where you got it.

A. It came to me by due course of mail from Chicago.

Q. 12. Examine the letter dated May 24, 1884, and marked Complainants' Exhibit 28, and state where you got it.

A. It came to me by mail.

Q. 13. Examine the letter dated May 26, 1884, marked Complainant's Exhibit 29, and state where you got it.

A. It came to me by post.

Q. 14. Examine the letter dated June 12, 1884, and marked Complainants' Exhibit 30, and state whose is the signature thereto.

A. I believe it to be Mr. Brown's.

Q. 15. Examine the letters dated June 14, 1884, and marked respectively Complainants' Exhibits 31 and 32, and state where you got them.

A. They came to me by post.

Mr. BURRY: Mr. Clark, I call upon you to produce, in pursuance of the notice heretofore served upon you, Mr. Blatchford's letter of June 19, 1884, to Mr. Brown.

Mr. CLARK: I cannot produce it, for the reasons stated in Mr. Paine's deposition.

Q. 16. Did you ever see the defendant John B. Brown?

A. Yes, sir.

Q. 17. State what, if any, agreement you made on behalf of the mission with Mr. Brown as to taking possession of the Purchase-street stores, so called.

A. I never made any.

Q. 18. State whether you were ever authorized by the mission to make any agreement in relation thereto.

148 Objected to, as the record must show.

A. I was not.

Q. 19. Are you familiar with the records of the Episcopal city mission?

A. I am.

Q. 20. State whether they conatin any authorization to you to make such an agreement with Mr. Brown.

A. They do not.

Q. 21. State whether John B. Brown ever arranged verbally with you, as the result of several interviews running over quite a little time, that he would turn over this Purchase-street property to the mission or yourself, and that you would rent it and sell it.

A. He never made any such arrangement.

Q. 22. State whether John B. Brown ever made with yourself or any of the officers of the mission, to your knowledge, an agreement by which the mission was to take this property and hold it in trust and sell it for the most they could and pay themselves out of it and turn the balance over to him.

A. He did not.

Q. 23. State whether any such agreement was made with you by John B. Brown, in the fall or winter of 1877 and '78, in Boston, at your office.

A. There was not.

Q. 24. State whether Mr. Brown ever agreed with you to turn the property over to you and you agreed to collect the rents, take care of the property, and effect a sale if you could.

A. There never was any such agreement.

Q. 25. State whether you ever had any talk with Mr. Brown on that subject.

A. It is possible I may have had.

Q. 26. Do you remember any such talk?

A. I do not. Perhaps, to qualify that statement, I had
149 some interviews with Mr. Brown; but I cannot recall the substance of those interviews.

Q. 27. At any of those interviews was there any such agreement made or any agreement relating to that subject?

A. There was not.

Mr. BURRY: I now offer in evidence the papers marked Complainants' Exhibits 17 to 32, both inclusive.

Objected to as incompetent, irrelevant, and immaterial.

Cross-examination.

(By Mr. CLARK:)

Q. 28. Were you present when the entry to take possession under the mortgages was made?

A. I was.

Q. 29. Have you produced copies of all your replies to letters of Mr. Brown or have you them here with you?

A. I have them not here, as far as I know.

Mr. BURRY: I will state that most of the letters written to Mr. Brown have already been offered in evidence by Mr. Brown, and that any letters which have not been offered have not been offered because they are supposed to be immaterial. Mr. Clark is perfectly welcome to an inspection of any that have not been offered.

Q. 30. Will you produce your copies of letters sent by you to Mr. Brown in reply to those of his offered by you at this hearing?

A. They are in my letter-copy book in my office.

Q. 31. Have you produced in the exhibits annexed by you to your testimony at this hearing all the letters received by you from Mr. Brown between June 13, 1878, and the present time?

Mr. BURRY: I answer for Mr. Blatchford that there are a few immaterial letters which I have not introduced which Mr. Clark
150 or any person representing Mr. Brown is welcome to inspect at any time.

(Recess until 2 o'clock.)

Q. 32. Have you personally had any negotiations with Mr. George W. Meserve since the conveyances of the Purchase-street stores?

A. I have never seen him.

Q. 33. Has any action been taken by the mission, to your knowledge, in relation to him?

A. None that I am aware of.

Q. 34. Do you know whether the mission directed suit to be brought against Mr. Meserve on the mortgage notes?

A. I do not know.

Q. 35. Those matters come more particularly under Mr. Pains' control rather than your own, do they not?

A. I do not know that I should say so.

Signature waived by agreement.

—— ——. —— ——.

151 GEORGE W. MESERVE, produced and sworn on behalf of the Episcopal City Mission *et al.*, was examined in chief by Mr. BURRY as follows:

Q. 1. Your name is George W. Meserve?

A. Yes, sir.

Q. 2. You are the George W. Meserve who has already testified in this case in Chicago?

A. Yes, sir.

Q. 3. Please examine the copy of the deed dated the 16th day of March, 1881, made by yourself and wife and Kirk D. Newell to Rebecca Miner, of Park Ridge, marked Complainants' Exhibit 33, and state at whose request you executed the original thereof.

A. That was done for Mr. Newell.

Q. 4. At the time you signed it was it agreed that you should be released from the notes assumed by you and secured on that property?

Objected to as leading and incompetent.

A. I can't recollect much about it, more than he came to me to get this release of property to take care of the encumbrance of it, and I at very short notice executed that deed to assist him in that effort.

Q. 5. Were you to be still liable on the notes?

Objected to for the same reason as before.

A. I thought not; if he paid them—took care of them—that would end the matter.

Q. 6. What was the agreement, if any?

Objected to for the same reason as before.

A. There was no written agreement between us. I had rather laid down on the claim for Mr. Brown to take care of, and he said he had an understanding with Mr. Brown that he should take care of part of the indebtedness and this would aid him in doing it, and of course if it was taken care of it relieved myself and Mr. Brown and him.

Answer objected to as irresponsive.

152 Q. 7. Was anything said about it?

Objected to.

A. That was the argument used in procuring my signature.

Q. 8. State as fully as you can what was said to you at the time you signed that deed.

Objected to.

A. I can't remember the language. I had entirely forgotten there was such a deed until my attention was called to it here.

Mr. BURRY: I now offer in evidence the paper marked Complainants' Exhibit 33, and state that the original thereof is not in my power or the control or power of the complainants and was not disposed of for the purpose of introducing secondary evidence of the contents thereof.

Paper objected to.
Cross-examination waived.
Signature waived by agreement.

153 FRANCIS V. BALCH, produced and sworn on behalf of the Episcopal City Mission *et al.*, was examined in chief by Mr. Burry as follows:

Q. 1. Please state your full name.

A. Francis Vergines Balch.

Q. 2. Your residence and occupation?

A. I reside in Boston, Prince St.; my occupation is lawyer.

Q. 3. Have you been representing the Episcopal city mission in regard to these Meserve mortgages on Purchase St.?

A. I did for a time. I forget whether it was before the firm was organized or not; either I or the firm did.

Q. 4. Did you ever have any communication with Mr. Meserve concerning the bringing of suit against Mr. and Mrs. Brown?

A. Yes.

Q. 5. State whether you have ever agreed on behalf of the mission to release Meserve from his liability on the notes secured by those mortgages.

A. I made no agreement on behalf of the mission with Mr. Meserve whatever.

Q. 6. State whether you were authorized to make such an agreement.

A. I don't consider that I was. It would depend wholly on my retainer in the matter. I had no special authority.

Q. 7. What was your retainer to do?

A. To procure payment from the Browns.

Q. 8. Did you ever see Mr. Meserve in relation to that matter?

A. To the best of my recollection, no; I wrote.

Q. 9. Did you ever see Mr. Meserve in the prison at Charlestown in relation to this matter?

A. To the best of my recollection, I n-ver did.

Q. 10. Could you be mistaken about that?

A. I can be mistaken about anything, but I don't think I am mistaken about that. I feel very sure.

154 Cross-examination.

(By Mr. CLARK:)

Q. 11. You caused suit to be brought first against Mr. Brown, did you not?

A. I don't recall as to the order in which the proceedings were begun.

Q. 12. Do you remember the fact that your suit in Boston failed for lack of legal service upon Mr. Brown?

A. That corresponds. It reminds me that it did. I didn't remember it, but I think that was the case.

Q. 13. And do you remember the fact that that suit was against Mr. Brown only and did not include Mrs. Brown?

A. I don't remember about that. I take your statement about it. Of course the papers will show for themselves.

Q. 14. Do you remember whether you delegated to Mr. Rackemann the procuring of Meserves' consent to that suit?

A. I had no personal relations with the suit after the matter went to Chicago. I understood Mr. Rackemann was in charge.

Q. 15. Prior to going to Chicago or prior to its being transferred to Mr. Burry, who, acting in behalf of yourself or your firm, conferred with Mr. Meserve?

A. I find letters on my letter book to Mr. Meserve and I presume that during that correspondence I was in charge; that would be my inference; and after that I presume Mr. Felix Rackemann was. I couldn't fix any date at which I ceased to be concerned.

Signature waived by agreement.

155 FELIX RACKEMANN, produced and sworn on behalf of the Episcopal City Mission *et al.*, was examined in chief by Mr. Burry as follows:

Q. 1. Your name is Felix Rackemann?

A. It is.

Q. 2. What is your residence and occupation?

A. My residence is Milton, Massachusetts, and my occupation is the practice of law.

Q. 3. Do you know George W. Meserve?

A. I do.

Q. 4. And John B. Brown?

A. I do.

Q. 5. Do you know the complainant The Episcopal City Mission or its officers?

A. I know some of its officers.

Q. 6. Did you ever see George W. Meserve in reference to suit proposed to be brought by the Episcopal city mission against John B. Brown and his wife, Lucy T. Brown, to enforce payment of certain mortgages on three lots in Purchase street, in this city?

A. I did.

Q. 7. How many times did you see Meserve with relation to that?

A. I will say certainly three times prior to October 1st, 1888, and possibly four.

Q. 8. With what object did you see him the first time?

A. With a double purpose. First, of getting him to explain to me something of the circumstances in detail of passed transactions, and, secondly, getting him to authorize the bringing of a suit against Mr. and Mrs. Brown in his name, together with others, if need be.

Q. 9. In pursuance of the last-mentioned purpose, was any paper signed by him?

A. There was.

Q. 10. Examine the paper dated the 3rd day of Feb., 1886, signed by George W. Meserve and marked Complainants' Exhibit 34, and state whether that is the paper then signed.

A. It is.

156 Q. 11. State what the conversation was between yourself and Meserve with reference to the signing of Complainants' Exhibit 34.

Objected to.

A. I couldn't undertake to give the exact conversation.

Q. 12. Give the substance of it as nearly as you can.

Objected to.

A. In substance my recollection is that I handed him this paper and asked him if he would be willing to sign it, and that before signing it he said that he didn't want to agree to anything as to bringing any new suits which should be brought in any way at his expense or that he should be put to any cost for the bringing of a suit, and that I told him that this paper was framed so as to provide that the litigation, if any, should be brought at the expense of the Episcopal city mission and there would be no charge to him. I don't think anything further, in substance, passed between us before his signature to this paper.

Q. 13. Was there anything passed immediately afterwards in reference to the same object?

Objected to.

A. In reference to his signing this paper?

Q. 14. Yes.

A. Mr. Meserve and I had some little conversation during that interview as to the history of the case and the negotiations between himself and Brown and himself and the mission and litigation, etc. My impression is that something was said about what was expected from the litigation which was intended to be instituted in accordance with this power, but nothing except general remarks.

Q. 15. Did you ever see Mr. Meserve more than once for
157 the purpose of procuring his signature to that paper?

A. No.

Q. 16. Where did you see him that time?

A. I saw him in State's prison at Charlestown, Massachusetts.

Q. 17. What was he doing there?

A. He was a convict at the time.

Answer objected to.

Q. 18. Who were present?

A. There were other prisoners and a warden or deputy warden in the corridor of the prison, but nobody immediately present. I don't know that anybody overheard anything that either of us said.

Q. 19. At the time he signed that authority to bring suit was there any agreement made by you on behalf of the mission to release Meserve from liability on those mortgages?

A. Most certainly not.

Q. 20. Did you make any agreement with him at that time as to the dismissal of any proceedings against him on these notes or mortgages?

A. I certainly did not, and I am very strongly of the opinion that at that time I didn't know there were any proceedings in court instituted against him. There have been two firms of Balch & Rackemann, the former including F. V. Balch and C. S. Rackemann and the latter under partnership agreement, dating Sept. 1st, 1886, of F. V. Balch, C. S. Rackemann, and F. Rackemann.

Q. 21. State whether you have read the testimony of George W. Merserve given in this case at Chicago.

A. I think I have read an abstract of it.

Q. 22. Was there any such agreement between yourself and Mr. Meserve as is testified to by him in connection with the execution of this Exhibit 34?

158 A. If I understand his testimony correctly there certainly was not.

Q. 23. State whether at the time of the execution of that instrument you were authorized to make such an agreement on behalf of the mission.

A. I certainly did not consider myself so. I don't now consider that I was so.

Q. 24. Was your retainer in this matter anything more than to prosecute this claim against the Browns?

A. Nothing.

Q. 25. Did you make any agreement with Meserve at that time

which was in substance or effect a release of his liability on these mortgages, or any of them, or a covenant not to sue him on these mortgages or any of them?

A. I made no agreement with Meserve whatever of any kind and was authorized to make none.

Mr. BURRY: I now offer in evidence the paper marked Complainants' Exhibit 34.

Cross-examination.

By Mr. CLARK:

26 Q. How many interviews in all did you have with Meserve?

A. Three that I can distinctly recall and possibly one more, but if I had a fourth it was merely a word or two at the foot of the stairs of this building, probably. I have a dim recollection of having seen him in the hallway, and I think the hallway of this building, but I have no recollection as to what passed between us at that time; nothing of any importance.

Q. 27. What was the consideration given for Complainants' Exhibit 34?

A. I gave no consideration whatever and know of none having been given.

Q. 28. The paper recites: "In consideration of one dollar and other good, sufficient, and valuable consideration to me in
159 hand paid by the Episcopal city mission." So far as you know, there was no consideration paid by yourself at the time you procured this paper to be signed?

A. None whatever.

Q. 29. Did Mr. Meserve willingly sign that paper at the first interview?

A. So far as I know, perfectly.

Q. 30. Then what was the occasion of the other three?

A. I saw Mr. Meserve on the other two occasions, and on the third, if there was a third, in order to learn from him, if possible, the facts as to certain alleged agreements and certain papers and certain negotiations, as I have said, between himself and Brown and the mission leading up to the mortgages and subsequent dealings between himself and Brown as to Chicago property.

Q. Did Meserve say anything at any of those interviews in relation to his own liability on the notes?

A. I think very possibly.

Q. 32. Do you recall it?

A. I can't recall any particular statement or remark which he made on the subject.

Q. 33. Or the substance of it?

A. Well, the substance of it, or the impression which it left on my mind——

Q. 34. Simply whether you recall the substance of it, not what it was.

A. Well, the substance of it was a tacit admission of his liability,

but a feeling that so far as he was concerned he should never be embarrassed by it.

Q. 35. Did he say anything about his never being embarrassed about it?

A. My impression is that he did.

Q. 36. You knew that he wasn't in insolvency?

A. I think he stated to me that he had never gone into
160 insolvency, but he also stated at the same time that Mr. Brown had a judgment against him here in Massachusetts for some fifteen hundred and odd dollars, on which he had never realized anything from him, Meserve, and never would, and I think he also stated in the same connection that the city mission would never get anything out of him.

Q. 37. How long was this first interview?

A. I think perhaps ten or fifteen minutes.

Q. 38. And you had prepared the paper before going there?

A. I took the paper there all prepared, in my recollection.

Q. 39. And you had never seen Meserve before?

A. I had never seen Meserve before, to my knowledge.

Q. 40. Was anybody with you?

A. I went alone to the prison, and, as I believe, we sat alone during the interview.

Q. 41. Wasn't substantially the only subject talked about by Meserve prior to sig-ing the paper his own liability upon the mortgage notes?

A. Oh, I don't remember that anything was said whatever about his liability on the mortgage notes prior to the signing of the paper. My recollection is that nothing was.

Q. 42. Did he sign the paper upon your mere request without comment?

A. Excepting that he wished to incur no further liability in the way of costs of litigation, I think; yes.

Q. 43. Have you seen a note today in the handwriting of Mr. Balch addressed to Mr. Meserve?

A. I have.

Q. 44. Does that refresh your memory as to any understanding between Meserve and the mission?

A. Not in the least. I never knew of that note having been written until today.

161 Q. 45. Was there not, Mr. Rackemann, as you understood the matter, an understanding with Mr. Meserve that he wasn't to be prosecuted upon those notes for the purposes of a collection?

A. Nothing of the kind.

Q. 46. How, then, do you explain that note?

A. The note of Mr. Balch to Mr. Meserve?

Q. 47. Yes; your partner.

A. In the first place, by saying that at the date of Mr. Balch's note to Meserve he was not my partner, and I was in Chicago, knowing, to the best of my recollection, nothing as to the fact of these mortgages ever having been given or the existence of Meserve. I have

a theory as to the existence of this note, which you can have if you want.

Q. 48. Have you examined Mr. Balch's correspondence with Meserve?

Objected to.

A. Not at all in detail.

Q. 49. Have you in a general way?

Objected to.

A. I dare say I have. I have no distinct recollection of it.

Q. 50. Have you gathered as a conclusion from that correspondence that Mr. Meserve was given to understand that no suit should be brought against him and prosecuted to a judgment?

Mr. BURRY: Objected to. Mr. Balch is within reach and will be recalled if Mr. Clark wishes to know anything about the correspondence. Objected to also because incompetent.

A. As I know the correspondence, I don't consider it capable of any such construction.

Q. 51. Had other interviews been had with Mr. Meserve in behalf of the city mission or communications in relation to this matter prior to your going to get the paper, Exhibit 34, signed?

162 A. I think that I had written Mr. Meserve prior to my going to see him at the prison. Whether or not others on behalf of the city mission had written or seen him in connection with this matter I can't say. I think not.

Q. 52. Have you any memory as to whether at this interview you held out any inducements to Mr. Meserve in relation to these notes?

A. Any inducement to do what?

Q. 53. Of any sort or kind.

A. For any purpose?

Q. 54. Any purpose.

A. It is now considerably over two years since I saw Mr. Meserve the first time, and I can't recall the exact conversation or any exact words used. I think it possible that in the course of my conversation with Mr. Meserve at that time and in talking over the litigation passed and proposed I may have said to him that we were now of the impression that we were pursuing matters on the right track, and that Brown in this litigation would be made to pay, as I thought—in all propriety and good conscience he ought to made to pay—and I may have said that of course the satisfaction of the claim of the mission by Brown would be a termination of the entire matter, but further than some general remark of that kind no inducement whatever was at any time held out by me to him for any purpose except possibly that I should say that after the Exhibit No. 34 and after Mr. Meserve's release from confinement I think I offered him some pecuniary consideration for his trouble in hunting up certain papers which we desired.

Q. 55. Has anything ever been said since in relation to the collection of those notes?

A. Except as to this litigation against the Browns in general, nothing.

Q. 56. Have you had any correspondence with Meserve?

163 A. Not since my first interview with him.

Q. 57. Had you had any correspondence prior to that?

A. I think possibly.

Q. 58. Have you examined to see?

A. I have not. My recollection is that I wrote him possibly twice prior to going to see him.

Q. 59. Wrote him from Chicago or Boston?

A. From Boston; shortly before I saw him in February, 1886, and not getting full explanations in answer to my letters, went to see him.

Q. 60. Before going to get Exhibit 34 signed hadn't the idea been conveyed to you that Meserve desired an understanding in relation to those notes?

A. I never had any idea prior to that first interview with Meserve that the situation was not perfectly understood in regard to those notes.

Q. 61. That there had already been an understanding in reference to the notes, do you mean?

A. I never knew of any understanding whatever different from the necessary legal inference from the papers themselves.

Q. 62. Do you mean that there was an understanding on Meserve's part that perhaps the life of the notes was not to be destroyed, but that he never was to be forced to pay them?

A. I never knew or heard any intimation of such idea either in the mind of Meserve or anybody else.

Q. 63. What, then, was the inducement for his signing that paper, Exhibit 34?

A. So far as I know there was no inducement. As I understand his notice, it was that he didn't consider that the claim outstanding against him was or could be the cause of any injury to him as a practical matter, and his personal feeling toward Brown, caused by

164 what he characterized to me as Brown's iniquitous treatment of him, was such that he was willing to help us in any way in a recovery against Brown.

Redirect.

(By Mr. BURRY:)

Q. 64. In your answer to interrogatory 34 what do you mean by the expression "but a feeling that he should never be embarrassed by it"?

A. Simply that Meserve stated frankly that he had no property whatever and the number or amount of claims against him made no possible difference to him.

Signature waived by agreement.

COMPLAINANTS' EXHIBIT 1. W. R.

BOSTON, *Sept.* 29, 1877.

R. T. Paine, Jr., Esq.

DEAR SIR: I wrote you from Chicago some days ago that if we could agree upon a basis mutually satisfactory, I was disposed to join you in an arrangement whereby the mortgages on the Purchase St. stores could be so changed that you could get in, money for the purpose of mission building—the amount that the savings banks are disposed to put on as value of present loan.

I have 3 stores on which is a mortgage of $19,500 each, as I remember your proposition of last spring was that a new mortgage of $16,000 each be put on, and that I pay you the balance in bonds.

I stated to you then that I should not be prepared to make
165 an arrangement for some time until the litigation touching the legality of the bonds was closed as I presumed you would want to do nothing while that was pending. The legality of the bond issue has been decided, and a suit for a judgment on the interest coupon was to have been disposed of in August but for the death of the attorney in charge, but will be in Jan'y. However, as the interest on the mortgages is now due, and as you indicated to me at our interview on Tuesday, that you would be disposed to make a deduction of $1,500 on the 3 mortgages if the arrangement could be satisfactorily made at the present time, I send you now the memorandum as promised, suggesting a change from your proposition in some respects and the following as a basis of adjustment.

The figures you gave me Tuesday, if I remember rightly, were as follows:

Interest on the mortgages, which you wished in cash...	$1,900	
Principal, 3 mortgages 19,500.....	58,500	
From which you propose deduction.....	1,500	00
	$57,000	
3 new mortgages $16,000 each	48,00–	
Balance cash, or bonds at cash value.....	9,000	

I had expected to get a larger discount than $1,500 although you had not indicated to me at any previous interview what discount you could make, and I will propose to you the following.

Cash from 3 mortgages 16,000.....	48,000
Bonds at cash value.....	10,000

Which is $900 better to me than your proposition and
166 covers the interest in the transaction which I desire instead of a separate payment.

Perhaps it may appear to you that I am considering only my own interests, but you will remember that the stores have been almost entirely unproductive up to this time, and I trust you will consider

the advantages to you—if any of converting the mortgages into cash for the use you have in view. If this ba-is of adjustment is satisfactory to your committee I will have the papers touching the investigation as to the issue of the bonds, with such information as has been obtained and the data of the litigation, decisions &c. submitted to your attorney, also the assessment papers and certificate of supervisor of the township of Seven Hickory, Illinois, that issued the bonds, for examination.

The bonds bear interest at 10 per cent., and are the only debt upon the town, they are worth par and are put in upon that basis.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 2. W. R.

BOSTON, *Oct.* 1, 1877.

R. T. Paine, Esq.

D'R SIR: In accordance with the understanding had at our interview today, I enclose to you 1 bond, Seven Hickory, Ills., of 1,000, the assessment return as certified by the county clerk the certificate of the supervisor of township and the opinion of Henry Crawford, as to the legality of the bonds.

These are all the papers I have with me, the balance which cover the details of the investigation are in the hands of Mr.
167 Crawford in Chicago and I will ask him to submit them to your att'y there if you will favor me with his address.

I wrote you on the 29th that I would put in $10,000 in bonds as the balance between the old mortgage of $19,500 and the new mortgages of $16,000 which was $900 better than your proposition, I now agree as we talked today, to make the amount $11,000 instead of $10,000, the expense of the title examination being covered in this amount.

I will be prepared to pass the papers and close the transaction at the date named—Nov. 1st, if accepted—if not, the interest on old mortgages shall be paid at that time.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 3. W. R.

CHICAGO, ILL., *Nov.* 3, 1887.

R. T. Paine, Jr., Esq.

D'R SIR: As I did not hear from you on the 1st as I expected, I write to ask which proposition you have decided to accept in regard to the Purchase St. store mortgages. I shall probably be detained here a few days longer but shall be prepared to close up the matter on my return.

Y'rs, J. B. BROWN.

168 COMPLAINANTS' EXHIBIT 4. W. R.

CHICAGO, ILL., *Dec.* 19, 1877.

R. T. Paine, Jr., Esq.

D'R SIR: Will you please mail to me here the papers I left with

you relating to the bonds, also receipt for the 2 bonds applied on account of interest.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 5. W. R.

CHICAGO, *Feb.* 25, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: Please write me what your committee wish to do in regard to the Purchase St. stores?

I feel somewhat discouraged at the condition of things as reported by Thayer. I had hoped it would be found that property would bring some reasonable return when the first of the year came.

Y'rs, J. B. BROWN.

Please send me the 2 coupons. I wish to present them to preserve all claims for interest. (They will not be paid as the suit on the coupons is not yet reached.) I will then return them to you.

169 COMPLAINANTS' EXHIBIT 6. W. R.

CHICAGO, ILL., *Mar.* 8, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: I received your T. D. today on my return from a ten days' absence. Also your two letters of 26th and 27th. I will present coupons and then return them to you. They will not be paid as judg't, on the coupon suit has not yet been taken. The previous suit was in the State court and went only to establish the legality of the bonds.

I wrote you before I left in regard to the interest on the Purchase St. store mortg's and asked what your com. wished me to do.

I am not in position to pay the cash for interest my R. R. matters are still in court. When I was in Boston and adjusted the interest matter on last 6 mos. I hoped things would change before next installment came due. I am also much discouraged at results of that property. I gave much time to it personally and Mr. Thayer has had full authority to close lease at almost any terms but I have succeeded in getting but ½ of the p'p'ty, in lease by permanent tenants, the rest I have left for storage.

Every dollar rec'd, and more too has gone in improvements, offices &c. &c. and the interest now amounts to nearly $4,000, which besides the cash (3 to $4,000) I put in at sale makes it a very hard bargain for me. I canvassed the matter pretty thoroughly when I adjusted the previous interest and you told me I must rely on your disposition to deal fairly with me when the time arrived.

170 That is why I wrote you in Feb'y and I can only say I will do just what you feel I ought to do if it is within my ability to do it and will ask you to write what, under the circumstances you and your associates feel that I ought to do.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 7. W. R.

CHICAGO, *March* 16, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: I enclose to you the 2 coupons they having been presented at the place designated for payment. I wrote to you some days ago and shall be pleased to hear from you when you have conferred with your associates.

Y'rs, J. B. BROWN.

The bank simply replied that no funds had been provided for the payment of the interest, it being in litigation (the coupon suit) I understand it will be reached within a few weeks and presume judgment will follow as the previous suit settled the legality.

COMPLAINANTS' EXHIBIT 8. W. R.

CHICAGO, *M'ch.* 23, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: I have your favor of the 20th I do not understand what the action you have taken signifies, as no proceedings of that nature are know- here. I can hardly feel it possible that
171 you would oppress or embarrass me in the matter after your interviews with me in the fall at which I felt you manifested a very fair disposition.

As I am at a loss to know the motive, and in fact the nature of this act, will you please write me. As to the rents, I have never rec'd., except what has been spent in improvements one dollar. I would have gladly have given to you, to apply on int. had you intimated to me that you desired it, and feel humiliated that any act that looks as if I was not fully desiring to act in the most honorable manner has been done—if it fact it has been done. I hardly know what to write as I don't know the effect of what has been done.

In regard to the rental of the balance of the stores, I have urged Mr. Thayer to his best endeavor and should accept the first reasonable offer that could be obtained. I have written him frequently and have hoped he would find customers as he had full authority to close any lease he thought fair.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 9. W. R.

CHICAGO, ILL., *Ap'l* 11, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: If it should become necessary to ask it, could I be assured that a reconveyance of Purchase St. stores would be made at some future time (before maturity of mort's) on payment of all

past dues, if deeds of the p'p'ty were put in your hands?
172 Please write me and regard this as confidential.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 10. W. R.

CHICAGO, *Ap'l* 23, 1878.

R. T. Paine, Esq.

D'R SIR: Will you please write me in response to my letter of some days since. I should be pleased to hear at your earliest convenience.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 11. W. R.

CHICAGO, ILL., *Ap'l* 27, 1878.

R. T. Paine, Jr., Esq.

D'R SIR: It is important that I learn from you what your committee can consisten-ly do. Will you please confer and let me know as early as you can conveniently do so.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 12. W. R.

CHICAGO, *May* 31, 1878.

R. T. Paine, Jr., Esq.

DEAR SIR: I have letter from Mr. Blume that he is compelled to be absent from Boston for some time. That he had seen you at my request in reference to redeeding the Purchase St. stores,
173 but you had not as yet replied. He wrote that you thought the matter had perhaps better rest as it is, I paying the taxes. I wish to say that I can put no more money into those buildings. I am seriously complicated by the Meserves' failure to take care of the Chicago mortgages, and the thing that I desired Mr. Blume to submit to you for your decision was, 1st, I to redeed to you the stores 2nd. What privilege would you give me as to repaying you and taking them back. How long could it run &c &c.

You stated that you did not wish to tie your hands so as not to be able to dispose of the mort's if you had opportunity. I could not expect you to do that and do expect that you will make the condition such as will enable you to realize if you have such opportunity. As Mr. Blume cannot attend to it, I wish you would write me on what conditions I can surrender the property and in the future repossess it.

Y'rs, J. B. BROWN,
125 *Dearborn St.*

COMPLAINANTS' EXHIBIT 13. W. R.

CHICAGO, *October* 16, 1879.

R. T. Paine, Jr., Esq., Pemberton square, Boston.

DEAR SIR: The suit to obtain a judgment upon the coupons of seven Hickory bonds which has been pending for some time in the Federal court at Springfield has been argued and by agreement the amount of coupons is to be made up to $5,000, to allow either party to appeal from the judgment.

174 The New York parties who brought the suit have about $2,500 coupons I agreed to gather in from friends of mine who are like holders of the bonds an equal amount. Will you please forward to me all the coupons now due upon the two bonds you have as by stipulation (as I understand it) any coupons can go into the suit to make up the amount required.

Y'rs, &c., J. B. BROWN.

COMPLAINANTS' EXHIBIT 14. W. R.

J. B. Brown, Esq., care of Henry Crawford, Esq., 97 Dearborn St., Chicago.

DEAR SIR: In reply to your favor of April 11, marked confidential, I beg to say that illness for two weeks past has prevented my thinking or consulting with any member of our committee about it. But I do not see how I could advise any such agreement as you wish, because you see it ties the hands of the Episcopal city mission during the whole time. What we wish is to convert our mortgages into cash and we could not widely take any action which conflicted with our interests.

Yours very truly,

(Signed) ROB'T T. PAINE, JR.

175 COMPLAINANTS' EXHIBIT 15. W. R.

MARCH 20, '78.

John B. Brown, Esq., care of H. Crawford, Esq., 95 Dearborn St., Chicago.

DEAR SIR: Your letter of M'ch 16 came duly with the two coupons of the seven Hickory Town bonds. I regret to say that our committee thought it necessary to enter and take possession of the three estates on Purchase St. mortgaged to our Episcopal city mission & to notify the tenants that they must pay us the rents.

I trust you will be able to pay up the interest & reinstate yourself at an early day. We have not discussed any further action in the matter. When you next come here I shall be happy to consult you in relation to any way for our good as well as your own. Meantime, please inform me if we may lease the premises (not now leased) for a term of not over 3 years, if we can find any offer.

Yo-rs truly,

(Signed) R. T. PAINE, JR.

COMPLAINANTS' EXHIBIT 16. W. R.

MARCH 26, '78.

John B. Brown, Esq., Chicago.

DEAR SIR: In reply to your favor of 23rd inst. I can only say that while we were sorry to feel obliged to enter & take possession of the 3 mortgaged estates, you surely cannot think it oppressive that when you were unable to offer any interest we felt it necessary to collect the rents which of course are applied on account of interest due & to fall due. Are the taxes of 1877 paid? And, if
176 not, what can you do about paying them & our interest so that we may relinquish possession again?

Yours truly,

(Signed) R. T. PAINE, JR.

COMPLAINANTS' EXHIBIT 17. W. R.

BOSTON, *Dec.* 3, 1877.

I hereby deliver to R. T. Paine, Jr., for and on account of the Episcopal city mission two (2) bonds of $1,000 each of the township of Seven Hickory, Coles Co., Illinois, bearing interest at ten per cent. on account of the interest due September 1st, 1877, on three mortgages of $19,500 each at 6½ per cent. interest due from me to them and amounting to the sum of $1,901.25; and I hereby agree to take up said bonds and to pay the amount of said interest with interest on the same at 6 per cent. from September, 1877, on or before one year from this date, or said corporation may at their option keep said bonds in settlement for said $1,901.25.

(Signed) J. B. BROWN.

COMPLAINANTS' EXHIBIT 17½. W. R.

By-laws of the Episcopal City Mission Adopted November 28, 1874.

Article I.

Object of the mission.—The object of the Episcopal city mission is hereby declared to be the promotion of the physical, moral,
177 and spiritual welfare of those in need in the city of Boston. To effect this purpose all the income of the corporation shall be devoted unless otherwise appropriated by the terms or intent of the donation. The religious services and instructions shall be those of the Protestant Episcopal Church, and all ministers and instructors in the employ of the corporation shall conform to the doctrine, discipline, and worship of said church.

Article II.

Membership.—All persons who have paid or shall hereafter pay at any one payment fifty (50) dollars towards the current expenses of the corporation shall become members thereof for life. All per-

sons who shall at any one time, and with the name accompanying the payment, pay a sum not less than five (5) dollars shall become thereby a member of the corporation for the current year: Provided, however, that persons not members of the corporation during at least the last quarter of the preceding year may not vote at any meeting held within thirty (30) days of their first enrolment on the treasurer's list of members: And further provided, that the non-payment of fees on the part of existing members after due notice from the treasurer for a period longer than three months from the beginning of the financial year shall cause erasure of the member's name from the list of the treasurer and loss of membership; and the financial year of the corporation is hereby declared to end on the thirtieth day of October in each year.

Article III.

Officers of the corporation.—The officers of the corporation
178 shall be a president, a secretary, a treasurer, and an executive committee consisting of the bishop of the diocese, four (4) clerical and four (4) lay members of the corporation. The bishop of the diocese shall be president *ex officio* of the corporation and of the executive committee. The secretary, the treasurer, and the four clerical and four lay members of the executive committee—of which latter the treasurer shall be one—shall be chosen by ballot at the annual meeting to hold office for the ensuing year and until their successors be chosen.

(At the annual meeting of the corporation held Nov. 22, 1882, article III was so amended that the executive committee was increased to five clerical and six lay members, of whom six shall constitute a quorum.)

Article IV.

Duty of the secretary.—The secretary shall notify and attend all meetings of the corporation and of the executive committee and duly record all their proceedings in a suitable book, which book of records shall be open at all convenient time to the inspection of any member of the corporation.

Article V.

Duty of the treasurer.—The treasurer shall have the custody of the common seal and of all the evidences and securities of property belonging to the corporation. He shall keep accurate books of accounts, showing all receipts and expenditures and the true condition of its pecuniary affairs, which books at all times shall be open to the inspection of the executive committee or of any member of the same. At every annual meeting of the corporation he shall exhibit an
accurate statement of all the money transactions of the pre-
179 ceding year, which statement shall previously have been examined by the executive committee or appointed members thereof. Such statements of its affairs shall also be made whenever required by the executive committee. He shall keep a correct list of all the members of the corporation, with the date of the receipt

of the names and membership fees of members, which list of names he shall furnish to the secretary seven days previous to the annual meeting of the corporation. The treasurer shall pay all lawful claims not exceeding fifty (50) dollars without special order, but larger bills shall be laid before the executive committee for action.

Article VI.

Duty of the executive committee.—The executive committee shall meet at least once in two months for the transaction of business. They shall have the direction and management of the real estate, property, and funds of the corporation, and shall cause all sums received for the admission of life members and all donations made for increasing the capital to be securely invested; but no act for the sale of any real estate shall be done except under a vote of the corporation passed at the annual or at a special meeting. All conveyances of real estate held by the corporation shall be by deed subscribed and acknowledged by the president or by such person as the corporation shall appoint, which deed shall be countersigned by the treasurer and sealed with the corporate seal.

Article VII.

Ministers and helpers in the work of the corporation.—The ministers and other appointed helpers in the work of the
180 corporation shall be chosen by the executive committee, by ballot, and after nomination at a meeting held at least twenty days before the election. All engagements between the corporation and such ministers may terminate on two months' notice on the part of either party, but no clergyman shall be required to leave the service of the corporation without notice of such proposed action, given at a meeting of the executive committee at least thirty (30) days before action is taken and at once communicated to said clergyman. Every clergyman in the service of the corporation must be a minister of the Protestant Episcopal Church in good standing, canonically resident in the diocese or willing to become so at once, and must reside in the city of Boston unless otherwise allowed by vote of the committee. All clergymen must report to the executive committee at least once in three months.

Article VIII.

Time of meetings.—The annual meeting of the corporation shall be held on the second Wednesday in November at such hour and place as may be designated by the executive committee, seven days' previous notice of which shall be given to each member by the secretary.

Special meetings may be called on like notice and with a statement of the business proposed at any time by the executive committee, and such meetings shall be called at any time on the written request of twelve members of the corporation.

At any meeting of the corporation nine members present shall constitute a quorum.

Article IX.

Alterations.—No alterations in or additions to the by-laws
181 shall be made except at the annual meeting of the corporation or at a special meeting called for that purpose, and no change shall be made except by the vote of two-thirds of the members present.

COMPLAINANTS' EXHIBIT 18. W. R.

CHICAGO, ILL., *June* 13, 1878.

John S. Blatchford, Esq., tr. Episcopal city mission.

DEAR SIR: Some time since I wrote to Mr. Paine in reference to the Purchase St. stores asking if I could deed them to your committee and at some future time, when able receive them back on payment of just dues. I did so fearing business complications then threatening might involve me. I had one letter from Mr. Paine in Ap'l, while he was ill, but having no reply to my later one, thinking he might be ill or absent, I write to you as the burdens have now come down upon me and compel me to call a meeting of my creditors and offer to surrender all to them.

They have manifested the greatest kindness and forbearance, and desiring to save my name from the stain of bankruptcy have requested me to directly apply to those parties to whom I am legally bound on mortgages to ask if I can be released on a surrender of the property. The meeting was held yesterday and adjourned till I could get matters in shape to report. The mortgages were made to Meserve 2 stores were deeded to Mrs. Brown and 1 to me. I assumed mortgage on the latter and gave bond on former. Meserve
is impecunious but might have legal recourse on me and
182 cause me trouble if my release was not such as to end all further recourse on him by you. I do not suppose he is worth anything as all the mortgages on the p'p'ty he took from me have come back on me by his failure.

I therefore, offer to deed the Purchase St. p'p'ty to you, and ask you reply in time to report to a meeting next week.

If accepted I will cause the deeds to be executed, if declined I have but one course left me, but of course have no claim on you to accept my offer if you consider it not to be for your interest to do so.

Y'rs, J. B. BROWN.

COMPLAINANTS' EXHIBIT 19. W. R.

CHICAGO, *March* 28, 1881.

John S. Blatchford, Esq., treasurer, Boston, Mass.

DEAR SIR: Your favor of the 26th with coupons Nos. 8 and 9 of Seven Hickory bonds, Nos. 33 and 34 received. I enclose herewith receipt for same.

In that connection I telegraphed you today as follows "Supreme court have confirmed validity of Seven Hickory bonds am negotiat-

ing to sell at 95. Do you care to put in your bonds?" which is hereby confirmed.

Yours truly, J. B. BROWN.

183 COMPLAINANTS' EXHIBIT 20. W. R.

CHICAGO, *May* 16, 1881.

John S. Blatchford, Esq., treas'r, 13 Exchange St., Boston, Mass.

DEAR SIR: In making the calculation of your proportion of the cash fee, due Mr. McIntyre in accordance with my letter to you, dated April 15 for legal services in carrying through the Seven Hickory bond suit, an error of $5.00 was made in the calculation.

The basis of calculation is ten per cent. of the bonds held and the coupons entered in the first suit in which judgment has been entered. On this basis, your two bonds and the four coupons, entered in the suit, would be $240 as your proportion of the fee, and $120 as the cash proportion due now.

Mr. McIntyre has urgently requested an early remittance of the cash portion of his fee and if you will send me your check for the latter amount I will remit to him.

Yours very truly, J. B. BROWN.

COMPLAINANTS' EXHIBIT 21. W. R.

CHICAGO, *May 30th*, 1881.

Jno. S. Blatchford, Esq., tr., Boston, Mass.

DEAR SIR: Will you please let me hear from you in regard to the cash portion of the fees on your bonds, for the attorney in the Seven Hickory bond suit. He is somewhat impatient that so much
184 of his fees shall be paid since he has procured a decision favorable to the bonds. As the town are still fighting the bonds, and the supervisor has resigned, so that the collection cannot be enforced and as we have to go through considerable additional litigation in regard to the matter, I think it is wise to pay the attorney's fees promptly so that we may have a willing service from him in continuing the future litigation against the town.

Yours truly, J. B. BROWN.

COMPLAINANTS' EXHIBIT 22. W. R.

CHICAGO, *July* 26, 1881.

John S. Blatchford, Esq., treas'r, Boston, Mass.

DEAR SIR: I have written you once or twice in reference to your share of the attorneys' expenses in the Hickory bond litigation. I wish you would kindly send me a check, as it is necessary to take further active measures — bring the township to time.

After the judgment was obtained at Washington, the people of the township decided to make a bitter fight, and have permitted their organization to lapse, so that there is no supervisor of the

town, and the probabilities are that the litigation will run along several years unless we prosecute the litigation with all vigor and make it as unpleasant as possible for them. To accomplish this, it is anticipated that we pay our legal fees as they come along, as if we do not do this we cannot expect good service from the at-
185 torneys. Will you kindly send me your check for your portion?

Yours very truly, J. B. BROWN.

COMPLAINANTS' EXHIBIT 23. W. R.

Subject: Suit on coupons maturing M'ch 1st.

CHICAGO, *Feb'y* 18, 1882.

John S. Blatchford, Esq., treasurer, Boston, Mass.

DEAR SIR: Seven Hickory township does not seem inclined to pay the judgment that we procured against it on the coupons. The supervisor and other town officials have gone out of the State, to prevent service of the writ of execution.

The attorney advises that we take judgment promptly on the coupons maturing March 1st. If you care to do so, please send them to me, and I will enter them in the suit.

In my judgment it is but a question of time when the judgment will be paid, as the t'p cannot long stand out, when we have a judgment of the Supreme C't against it.

Yours truly, J. B. BROWN.

I wrote you once or twice in reference to your share of the attorney's fees for the services already rendered but received no response whatever. It is possible that my letters miscarried.

186 COMPLAINANTS' EXHIBIT 24. W. R.

Subject: Suit on Seven Hickory bonds maturing M'ch 1st.

CHICAGO, *Feb'y* 25, 1882.

John S. Blatchford, Esq., tr., 13 Exchange St., Boston, Mass.

DEAR SIR: I wrote you some days ago about placing your Seven Hickory coupons in the suit to be commenced on the coupons maturing March 1st, but have received no answer. As the time in which to commence the suit is limited, please inform me, soon as convenient, if you care to send your coupons here for the purpose mentioned. I will of course, send you a receipt for them.

Yours very truly, J. B. BROWN.

COMPLAINANTS' EXHIBIT 25. W. R.

N. Y., *Oct.* 16, 1882.

J. S. Blatchford, Esq.

D'R SIR: A proposition is now made to the party here who carried on the Hickory bond suit, and who owns 10 per cent. of the

bonds, to settle at 80 per cent. He is disposed to take it, and has said to me that as our coupons were in his suit, if we wished to carry the suit on to a conclusion, he would sell his interest to us at same price the parties offered in behalf of the townsgip. I am conferring with the different holders of the bonds that I represented in the suit to know their feeling. If you desire to put in your bonds, please advise me, if not, please let me know it. I will say, that I believe in the ultimate collection of the debt, but it may take some time and expense to bring it about.

Y'rs, J. B. BROWN.

187 WINDSOR HOUSE.

DEAR MR. PAINE: Do you think it best to decline Mr. Brown's suggestion and continue as we have done to hold these bonds? They seem to be steadily appreciating in value, and if finally paid as I incline to believe will be the case, we shall get the accrued interest upon them I presume.

Sincerely yours, J. B. B.

Oct. 18, '82.

I would accept 85 per cent. of our bonds adding the accrued coupon interest—free of all costs for suit &c.

Oct. 18, '82.

R. T. PAINE, JR.

COMPLAINANTS' EXHIBIT 26. W. R.

N. Y., *Nov.* 17, 1882.

J. S. Blatchford, Esq.

D'R SIR: I duly received your note *in re* 7 Hickory bonds. You state you are willing to accept 80 per cent., free of attorney's fees (as I remember it). I do not think they could be put into the settlement on that basis as the parties here have already offered theirs at 80 per cent. and have paid their att'y's fees 10 per cent. So far as it has not been accepted by the parties desiring to settle for the town. I write this that you may know that the offer you make is not the same as made by the N. Y. parties, though I will say I do not myself wish to accept 80 per cent. believing the matter will pay more, though there will be additional expenses attached. I
188 gathered these bonds from the several holders and put them into the suit for them, but wish each one to decide as to whether or not they wish to settle at any stage of the litigation. Address me at Windsor if you wish to say anything further on the matter, as I shall be here for a few days.

J. B. BROWN.

COMPLAINANTS' EXHIBIT 27. W. R.

CHICAGO, *May 24th*, 1884.

John S. Blatchford, Esq., tr., 13 Exchange place, Boston, Mass.

DEAR SIR: There was a meeting here yesterday of such parties as held bonds of Seven Hickory, that had not been heretofore pur

chased by the town, at which all the bonds were represented, except your two and three owned in Ohio.

An adjustment was made on the following basis, by myself and such parties as I represented in the suit, namely, sale of the bonds and past-due coupons and the sale of the respective interests in the judgments at the rate of 66⅔ cts., they having the option to take them at this rate within 10 days provided they could secure a sufficient number of the principal property-holders of the town to make a note at 4 mos. abundantly good, so that it could be discounted. Some of the smaller owners preferred to accept the offer made by Mr. Johnson to receive $666.00 for each bond and $50 for each coupon, without accrued interest, taking the same in cash. He took up all of the bonds except yours and those owned and controlled by myself and friends which were sold him under above
189 contract. I told him I had no authority whatever to speak for you, but gave him your address and the amount of your ownership viz: 2, bonds with past-due coupons since 82 attached, and the interest in the judgments obtained against the town as follows, 2 coupons of bonds 33 & 34.

In judg't rend., July 3 '80 at 100		400 00
Int. from maturity of coupons to date of jud'gt		44 12
Int. in first judg't		444 12
2 coupons of 2 bonds in judg't rend. July 2 '81	400 00	
Int., from maturity to date of judg't	20 06	
		420 06
Int. in both judg'ts		$864 18

I believe you have not paid your share of the fees for your two bonds which by agreement with the attorneys should be $100 for each bond. You doubtless have received a letter from Mr. Johnston whose address is Charleston, Ills., he being president of the Second National bank of that place.

I write this at his request to inform you what has been done by the remaining bondholders.

Yours truly, J. B. BROWN.
J.

(Dictated.)

COMPLAINANTS' EXHIBIT 28. W. R.

CHICAGO, *May 24th*, 1884.

J. S. Blatchford, Esq., Boston, Mass.

DEAR SIR: There is an arrangement about perfected to refund the defaulted Seven Hickory R. R. bonds at 66⅔ cents on the dollar. I own and control the largest interest in them now and
190 have agreed to that kind of a settlement. I am told by Mr. John B. Brown of Chicago that you own an interest in both the Eller judgments and two of the bonds Nos. 32 and 34. If you

want to come in please inform me by letter at Charleston, Ills., care of the Second National of Charleston. Mr. D. S. McIntyre the att'y for the bondholders will write you from Mattoon, Ill., the particulars in detail.

Yours respectfully, ISAIAH H. JOHNSTON,
Charleston, Ills.

COMPLAINANTS' EXHIBIT 29. W. R.

MATTOON, ILLS., *May 26th*, 1884.

J. S. Blatchford, Esq., 13 Exchange street, Boston, Mass.

MY DEAR SIR: Mr. J. B. Brown and our other clients in the litigation against the town of Seven Hickory, Coles Co., Ills., have agreed on a settlement on the basis of 66⅔ per cent. of principal and int. All of our clients, being every one interested in the litigation, have accepted, except yourself. As I felt confident that you would not care to incur the expense of further litigation alone I did not telegraph you for of course a letter is more satisfactory. This settlement is not with the township itself for it has no organization, the officers having run off long ago, but is with a syndicate of wealthy individuals living in the township.

This 66⅔ is to be paid, one-third cash, and the balance in refunded bonds, duly registered and bearing six (6) per cent. interest at their market cash value to be all delivered inside of four months
191 or the balance to be in notes signed by the individuals themselves and made satisfactory to me, running not to exceed one year at seven per cent. interest. Mr. I. H. Johnson, president Second Nat. Bank of Charleston, will pay you cash for your bonds at 66⅔ and cash for your coupons and interest in the two judgments at 50 cents. Your interest in judg't of July 3, 1880, is $444.12 and in the judg't July 2, 1881, is $420.06. Please write me fully your pleasure in the matter and send bonds and coupons to me and write me authority to assign your part of the judgments.

Yours truly, D. S. McINTYRE.

COMPLAINANTS' EXHIBIT 30. W. R.

CHICAGO, *June* 12, 1884.

John S. Blatchford, Esq., treas'r, 13 Exchange St., Boston, Mass.

D'R SIR: In clearing up the Seven Hickory suit matters, I notified the parties that judgment on 8 coupons belonged to you, and I understand the attorney has been in correspondence with you in regard to it. Please send me my receipts which I gave you on receipt of the coupons wherein I agreed to enter them in the suit.

I have gotten in my receipts from all the parties from whom I collected coupons, most of whom have settled with the town, and those that did not settle I have asked to take care of their share of the judgment, and return me my receipts which has been done. I will therefore, ask you to return my receipts, and give such instruc-

tions to the attorneys, Mes-rs. D. F. and D. J. McIntyre, of
192 Mattoon, Ills., in regard to the judgment as you may desire.
Yours truly, J. B. BROWN.

COMPLAINANTS' EXHIBIT 31. W. R.

MATTOON, ILLS., *June* 14*th*, 1884.

Jno. S. Blatchford, Esq., 13 Exchange St., Boston, Mass.

MY DEAR SIR: Your favor of the 10th ult., is received and contents noted. In reply would say all that is requisite to close with Mr. Johnson is to send your bonds and coupons to the Second Nat. Bank Charleston, Ill., to be delivered on payment of the money, or and it is the better way. Send the bonds and coupons by express to Mr. Johnson direct C. O. D. $1,633.33 and write me authority to sell and assign your interests in the judgments at 66, ⅔ face value, $576.12.

Yours very truly, D. S. McINTYRE.

COMPLAINANTS' EXHIBIT 32. W. R.

CHARLESTON, ILLS., *June* 14, 1884.

J. S. Blatchford, Esq., 13 Exchange St., Boston, Mass.

DEAR SIR: Yours of the 10th inst., received. I did make a cash proposition through Mr. J. B. Brown of Chicago and told him to state it to you, which I presume he did. It was this.

Two bonds $1,000 each with current coupons attached at 66 ⅔		$1,333 33
193 Six past-due coupons Nos. 10, 11 & 12 each bond		300 00
		$1,633 33

The two bonds and six coupons you can send to me by express C. O. D. or to the bank for collection. I enclose written authority to your attorney Mr. McIntyre to assign me your interest in the judgments. This you can send to him at Mattoon, Ill., and when he makes the assignment I will pay him five hundred and seventy-six and $\frac{12}{100}$ dollars, which will be 66⅔ to the dollar on the face of the two judgments.

Yours respectfully, ISAIAH H. JOHNSTON.

COMPLAINANTS' EXHIBIT 33. W. R.

This indenture witnesseth that the grantors, Kirk B. Newell (a bachelor) George W. Meserve, and Esther M. Meserve, his wife, all of the city of Boston in the county of Suffolk and State of Massachusetts for the consideration of one dollar convey and quitclaim to Rebecca Miner of the village of Park Ridge county of Cook and State of Illinois, all interest in the following-described real estate to wit. The south thirteen $\frac{76}{100}$ acres (13.76) of a certain lot or parcel of land being a part of the west half of the southeast quarter of sec-

tion thirty-five (35) township forty-one (41) north of range twelve (12) east of the third principal meridian and bounded as follows, to wit:

Commencing at a point on the north line of said west half, distant 50 links, west from the northeast corner running thence
194 south parallel with the east line 17 chains and 32 links thence west parallel with the north line 19 chains and 50 links to west line of said west half, thence north with said line 17 chains 32 links to northwest corner thereof, thence east 19 chains and 50 links to place of beginning containing 33.76 acres more or less situated in the county of Cook in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this (16) sixteenth day of March, A. D. 1881.

KIRK B. NEWELL. [SEAL.]
GEORGE W. MESERVE. [SEAL.]
ESTHER M. MESERVE. [SEAL.]

Witness:
EDWIN H. DARLING to all.
EDWARD J. JONES to all.

STATE OF MASSACHUSETTS, } ss:
County of Suffolk, City of Boston, }

I, Edward J. Jones, a commissioner for the State of Illinois, in and for said county, in the State aforesaid, do hereby certify that Kirk B. Newell, George W. Meserve, and his wife, Esther M. Meserve, all of said Boston, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

195 Given under my hand and official seal this 16th, sixteenth, day of March, A. D. 1881.

{ Seal Edward J. Jones, Commissioner for Illinois, The Sovereignty National Union, Boston, Suffolk county, Mass., U. S. A. }

EDWARD J. JONES,
Commissioner for Illinois, Residing at said Boston.

No. 316,027. Filed for record 21 March, A. D. 1881, at 4 p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wiley S. Scribner, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the twenty-first day of March, A. D. 1881, as document No. 316,027, and recorded in Book 1080 of Records, at page 67.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at Chicago, this sixth day of July, A. D. 1888.

WILEY S. SCRIBNER, *Recorder.*

COMPLAINANTS' EXHIBIT 34. W. R.

I, George W. Meserve, formerly of Boston, in the county of Suffolk and Commonwealth of Massachusetts, now of Charleston, in said county, in consideration of one dollar and other good, sufficient, and valuable consideration to me in hand paid by the Episcopal city mission, a corporation organized under and by virtue of the laws of the said Commonwealth, and having headquarters in
196 said Boston, hereby sell, release, set over, and assign unto the said Episcopal city mission all the claims, demands, or rights of action of whatsoever sort or kind in law or in equity which I may have against John B. Brown, formerly of Boston, now of Chicago, Cook county, Illinois, or against Lucy T. Brown, wife of said John, and I hereby authorize and empower the said Episcopal city mission, in its own right and name, or in my name and stead, as as attorney for me, to institute, prosecute, and control any suit or suits or actions at law or in equity in any court of record of the United States, or of any one of said States, against the said John B. Brown or said Lucy T. Brown, or both, either individually or jointly, or the heirs, executors, administrators, or assigns of either or both to prosecute the said actions, if any of them, to final judgment and execution, and generally to have and exercise in the premises as full power and authority as I might do if personally present, holding any & all proceeds, sums, or amounts realized to its own proper use and behoof forever. Always provided that this assignment and power shall not be construed as in anyway a right, power, or authority in the said city mission to incur and costs or expenses for the payment of which I or my heirs, executors, or administrators shall in any way be liable.

In witness whereof I hereunto set my hand and seal this third day of February, A. D. 1886.

GEORGE W. MESERVE. [SEAL.]

Signed in presence of—
FELIX RACKEMANN.

197 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

CHARLESTON, *Feb.* 3*d*, 1886.

Then personally appeared the above-named George W. Meserve and acknowledged the foregoing instrument to be his free act & deed.

Before me—
FELIX RACKEMANN,
Notary Public.

Copy.

COMPLAINANTS' EXHIBIT 35. W. R.

Know all men that I, George W. Meserve, the obligee in a certain bond dated March 19, 1877, and made to me by John B. Brown in relation to mortgages on two estates on Purchase street, in Boston, do hereby assign and transfer the said bond and all use and benefit thereof and thereunder to the Episcopal city mission and to its assigns, and I do hereby agree that said Episcopal city mission and its assigns may at all times and in all ways use my name in any and all suits at law or in equity and otherwise for all purposes to aid them and their assigns to obtain any and all benefits which may in any way be made to accrue to me or to said Episcopal city mission or to its assigns out of or under said bond.

Witness my hand and seal this nineteenth day of March, eighteen hundred and seventy-seven.

GEORGE W. MESERVE. [SEAL.]

198 COMPLAINANTS' EXHIBIT 36. W. R.

BOSTON, *Nov. 5th*, 1877.

J. B. Brown, Esq., care of H. Crawford, Esq., 97 Dearborn St., Chicago.

DEAR SIR: In reply to your favor of 3rd inst., just received. I would say that I was expecting to see you here. From what I learn and judge, I cannot advise the Episcopal city mission to accept the offer of bonds, and shall therefore expect the 6 mos. interest on the B. mortgages at your early convenience.

Yours truly, R. T. PAINE, JR.

COMPLAINANTS' EXHIBIT 37. W. R.

BOSTON, *Feb'y 26th*, 1878.

J. B. Brown, Esq., care of Henry Crawford, Esq., 95 Dearborn St., Chicago.

DEAR SIR: I beg to send notice that interest falls due March 1st, next on the three mortgages of $19,500 each on the Purchase St., stores held by the Episcopal city mission, also interest & principal of $500 mortgage held by me on one of same.

Yours truly, R. T. PAINE, JR.

199 COMPLAINANTS' EXHIBIT 38. W. R.

BOSTON, *Feb'y 27th*, 1878.

J. B. Brown, Esq., care of Henry Crawford, Esq., 95 Dearborn St., Chicago.

DEAR SIR: I enclose the two coupons each for one hundred dollars on the town of Seven Hickory, 10 per cent. $1,000 bonds, Nos.

33 & 34, the coupons being due March 1st, 1878—as requested by you in your letter of Feb'y 25th, just received, and I will thank you to return them to me after they have been presented for payment (unless they are paid). I wrote you a letter yesterday, asking that interest might be promptly paid on our mortgages.

Yours truly, ROB'T TREAT PAINE, JR.

COMPLAINANTS' EXHIBIT 39. W. R.

BOSTON, *March 6th*, 1878.

J. B. Brown, Esq., care Henry Crawford, 95 Dearborn St.:

When can you be here and transact Purchase-street business.

ROB'T T. PAINE, JR.

200 COMPLAINANTS' EXHIBIT 40. W. R.

BOSTON, *March 20th*, 1878.

John B. Brown, Esq., care H. Crawford, Esq., 95 Dearborn St., Chicago.

DEAR SIR: Your letter of March 16th, came duly with the two coupons of the Seven Hickory town bonds.

I regret to say that our committee though- it necessary to enter and take possession of the three estates on Purchase St. mortgaged to our Episcopal city mission and to notify the tenants that they must pay us the rents.

I trust you will be able to pay up the interest, and reinstate yourself at an early date. We have not discussed any further action in the matter. When you next come here, I shall be happy to consult you in relation to any way for our good as well as your own. Meantime, please inform me if we may lease the premises (not now leased) for a term of not over 3 years, if we can find any offer?

Yours truly, R. T. PAINE, JR.

COMPLAINANTS' EXHIBIT 41. W. R.

BOSTON, *Jan. 31st*, 1881.

J. B. Brown, Esq., 125 Dearborn St., Chicago.

MY DEAR SIR: On Oct. 30th, 1879, I forwarded to you at your request the unpaid coupons of the two $1,000 Seven Hickory bonds to be used in connection with a suit to obtain judgment &c. The result of the suit we have never learned. We are now offered $490 for each of the $1,000 bonds, but are not informed as to the present or possible future value of them. Can you give us information upon this subject?

Very truly yours, JNO. S. BLATCHFORD,
Treas., 13 *Exchange St.*

201 COMPLAINANTS' EXHIBIT 42. W. R.

BOSTON, *March* 16, 1881.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: I duly received your telegram of 14th inst. of offer of $1,200.00 and possibly $1,250.00 for the Seven Hickory bonds. I presume that we incur no risk in holding them. If we can sell at the above price now, we can probably sell for as much a few months hence, where, possibly, some final disposition of the Purchase St. estate interest may be made.

I thank you for so far interesting yourself in ascertaining value and possibilities of sale, of the bonds, and am very truly yours,

JNO. S. BLATCHFORD, *Treas.*

COMPLAINANTS' EXHIBIT 43. W. R.

BOSTON, *March 26th*, 1881.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: In reply to your favor of 21st inst., I beg to send you inclosed the coupons upon the Seven Hickory bonds, that have matured since the previous ones were sent. They are coupons numbered 8 and 9 on bonds numbered 33 and 34. Will you please return me receipt for them.

JNO. S. BLATCHFORD, *Treas.*

COMPLAINANTS' EXHIBIT 44. W. R.

CONWAY, N. H., *March 29th*, 1881.

J. B. Brown, 125 Dearborn St., Chicago:

Would rather not sell bonds at ninety-five.

J. S. BLATCHFORD.

202 COMPLAINANTS' EXHIBIT 45. W. R.

BOSTON, *July 29th*, 1884.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: I beg to acknowledge receipt of your favor of the 24th inst., and I am glad to anticipate that the matter may be adjusted without litigation. I will confer with Mr. Balch, our attorney, upon the subject.

As regards your suggestion of a reference of the matter to my brother, Mr. E. W. Blatchford I am very doubtful whether he would consent to act.

Very truly yours, JNO. S. BLATCHFORD.

COMPLAINANTS' EXHIBIT 46. W. R.

BOSTON, *Aug. 20th*, 1884.

John B. Brown, Esq., Chicago.

MY DEAR SIR: In your favor of the 24th of July you suggest a reference of the matter of the Purchase St. estates to my brother A. E. Blatchford of Chicago, for adjustment. I was then in almost daily expectation of seeing him here, but his contemplated visit was delayed by reason of illness. I saw him here last week and communicated your suggestion to him, while he has not declined to act in such capacity, I think it probable that he would decline upon the formal request to so act.

203 If there is to be an attempt to adjust the matter in this way—by a reference—it should clearly, I think be done here, for the whole history of the matter, in all its details, is here, and it can be proceeded with here with the least expenditure of time, trouble and cost.

I think there is no question upon this point, and it is probable that we could make it a condition of such procedure, as would I think, be quite proper. But in any case, procedure without delay is important, and I shall await your early reply.

Very truly yours, JNO. S. BLATCHFORD.

(Endorsed:) Filed Oct. 10, 1888. Wm. H. Bradley, clerk.

204 Afterward, to wit, on the 21 day of December, 1889, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report, together with testimony and exhibits thereto attached, *are* in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN *et al.*
} In Chancery.

Master's report of testimony.

To the honorable the judges of said court:

I, Henry W. Bishop, master in chancery of said court, to whom, by an order entitled herein, the above-entitled cause was referred, hereby report that having given notice to the parties interested that a hearing for the purposes in said order expressed would be had before me in my office, room 24 Honore building, in the city of Chicago, Illinois, on the twentieth of February, A. D. 1888, I was at said time and place and upon certain other days subsequent thereto attended by Mr. George Burry, for the complainants, and

Osborne and Lynde, for the defendants, and by John B. Brown, Geo. W. Meserve, & Mrs. Lucy T. Brown, witnesses produced before me, whose testimony was duly taken before me and is herewith reported.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Chicago, Illinois, December 20th, A. D. 1889.

205 In the Circuit Court of the United States for the Northern District of Illinois.

EPISCOPAL CITY MISSION, Complainant-,
vs.
J. B. BROWN *et al.*, Defendants. } In Chancery.

Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Monday, the 20th Day of February, A. D. 1888.

Present: Mr. Burry, for complainant-; Mr. Osborne, for defendants.

JNO. B. BROWN, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. OSBORNE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
A. John B. Brown.
Q. You are one of the defendants in this cause?
A. I am.
Q. Where do you reside, Mr. Brown?
A. Chicago.
Q. Are you acquainted with The Episcopal City Mission, a corporation or association, the complainant in this cause?
A. I am; I know some of its officers.
Q. How long have you known them and that corporation?
A. About ten years.
Q. What persons have you known connected with that corporation?
A. I knew Mr. Blatchford and Mr. Paine.
Q. Are you acquainted with a man by the name of Meserve?
A. I am.
Q. Where does he reside?
A. Boston.
Q. What is his first name?
A. George W.
Q. Do you know the property which is mentioned in this
206 bill of complaint, on Purchase St., I think, in Boston?
A. I do.
Q. How long have you known that?
A. About eleven years.

Q. Were you ever in possession of that property?
A. I was.
Q. When?
A. From the spring of 1877 until the winter of 1877–'8.
Q. From whom did you receive that possession?
A. George W. Meserve.
Q. How long did you continue in possession?
A. Until about the close of the year 1877 or the beginning of the year 1878.
Q. Who did you deliver possession to?
A. To the Episcopal city mission.
Q. Under what circumstances did you deliver possession, Mr. Brown?
A. The property or the mortgages upon the property, which had been exchanged with Meserve for the stores——

Objected to as a statement of the contract.

—he had failed to pay the interest upon, that came upon me (or rather the holders of the mortgages), and I was liable to have to pay the interest on both properties, the property that I received from Meserve and the property that he had taken from me——

Objected to as immaterial.

Q. Who held the mortgages upon this property?
A. The stores?
Q. Yes.
A. The Episcopal city mission.
Q. You mean the stores on Purchase St.?
A. The stores on Purchase St. I went to Mr. Blatchford, the treasurer of the mission, and stated to him the circumstances.

Mr. BURRY: Were these statements in writing?

207 A. Verbally, and we arranged as the result of the interviews—we had several interviews, running over quite a little time—that I should turn over the property to them and they would rent it and sell the property. I had in there, as I stated to them, some $6,000, about that, and the arrangement was, of course, first they would get their own interest in the matter, and then mine, as far as they were able; they were to have the possession and control of the property. It was turned over to them at that time, and they had it in their possession for years and controlled it, rented it, collected the rents; in fact, always had it so far as I know.
Q. Did you or any one for you ever have possession of the property after that time?
A. No, sir; never was at the property after that time.
Q. Did you have a correspondence with any one in relation to that property?
A. After they had had the stores in their control for some years.
Q. Who was it with?
A. Mr. Blatchford
Q. Please look at the letter shown you and state if that was your letter in relation to that matter.

A. It is.
Q. What was Mr. Blatchford's position?
A. He was the treasurer of the Episcopal city mission.
Q. Did you receive this letter?
A. I did.
Q. About the time it was written?
A. Yes.
Q. In due course of mail?
A. Yes.

Mr. OSBORNE: I offer that letter in evidence, hereto attached, marked "Exhibit 1, H. W. B., master."

208 Q. Mr. Brown, please look at the letter now shown you and state whether that is one of the letters in the correspondence that occurred between you and the Episcopal city mission.
A. It is.
Q. You received that in due course of mail?
A. I did.
Q. That is in the handwriting of Mr. Blatchford?
A. Yes.
Q. And the other also?
A. Yes; both were.

Letter offered in evidence, marked "Exhibit 2," a copy of which is hereto attached.

Q. Please look at the letter now shown you and state whether that is one of the letters received during the correspondence and whether it is in the handwriting of Mr. Blatchford.
A. Yes; that is a letter I received from Mr. Blatchford and it is in his handwriting.

Letter offered in evidence, marked "Exhibit 3," a copy of which is hereto attached.
Mr. BURRY: I object to the introduction of a part of this correspondence unless the whole is introduced.

Q. Mr. Brown, have you a letter to which that is a reply of July 9th?
A. I have a copy of it—of the letter of July 9th.
Q. Are you in possession of the original—do you know anything about the original letter?
A. It is a letter that I addressed to Mr. Blatchford. This is in answer to it—the letter last offered, marked "Exhibit 3."

Mr. OSBORNE: There are three or four of these letters I want to offer. Mr. Burry, will you waive notice to produce the originals?
Mr. BURRY: I will waive notice to produce the original of any letters of which I have copies.
209 Mr. OSBORNE: I will offer letter of July 9th in evidence and mark it Exhibit 4.
A copy of said letter hereto attached.

Q. Mr. Brown, have you a letter of February 3, 1881?

Letter-press copy offered in evidence, marked "Exhibit 14," a copy of which is hereto attached. Notice to produce the original is waived by Mr. Burry.

Q. Mr. Brown, did you receive in reply to that letter the
212 letter which I now hand you?
A. I did.
Q. In whose handwriting is that letter?
A. John S. Blatchford's, treasurer.
Q. What is the date?
A. October 29, 1883.

Letter offered in evidence, marked "Exhibit 15," a copy of which is hereto attached.

Q. Mr. Brown, did you afterwards receive a letter from Mr. Blatchford dated December 17, 1883?
A. I did.
Q. Have you the original of that letter?
A. I have not.
Q. Do you know where it is?
A. Well, it was sent by me to I. R. Clarke, Boston, on the 26th of January, 1884.
Q. Have you made any effort to recover that?
A. I have.
Q. What efforts?
A. An effort to procure it, and he says that he is unable to find the original. This I have is a copy taken at the time the original was sent to him.
Q. Do you know whether that is a genuine copy?
A. It is; yes. I received the letter.
Q. You received it in due course of mail?
A. I did.
Q. From Mr. Blatchford?
A. Yes; inclosing an account which he had stated in his previous letter he would have made up and sent to me.
Q. Is that the original account?
A. Yes; it is.
Q. That letter speaks of a resolution?
A. It does.
Q. Do you know where that is, the resolution or copy of the resolution?
A. I never saw the resolution. He informed me that the board had passed such a resolution.

Mr. OSBORNE: I offer the copy of the letter and the original
213 account which was sent with it, marked "Exhibit 16," copy of which is hereto attached.

Q. Mr. Brown, did you answer that letter?
A. I did.
Q. Under date 22nd of December, 1883?
A. I did.

Q. Have you a letter-press copy of the answer?
A. I have.
Q. Will you please produce it?
A. Letter-press copy produced by Mr. Brown.
Q. Did you send that answer?
A. I did.

Letter-press copy offered in evidence, marked "Exhibit 17," a copy of which is hereto attached.

Mr. OSBORNE: Will you waive notice to produce the original as to that, Mr. Burry?

Mr. BURRY: I will waive notice to produce the original.

Q. Mr. Brown, did you get an answer to that letter?
A. I did.
Q. Is that a copy of the answer?
A. It is.
Q. Where is the original, do you know?
A. It was sent to Mr. Clarke, in Boston.
Q. Have you tried to produce the original since?
A. Yes; I have.
Q. And failed?
A. He is unable to find them. He looked through his papers and was unable to put his hand on it.

Copy of letter offered in evidence, marked "Exhibit 19," a copy of which is hereto attached.

Q. Did you answer that letter?
A. I did.
Q. What date?
A. The 10th of January, 1884.
Q. Have you a letter-press copy of that with you?
A. I have.
214 Q. Did you send it in due course of mail?
A. I did.

Letter-press copy offered in evidence, marked "Exhibit 20," a copy of which is hereto attached.

Mr. OSBORNE: Is notice to produce the original waived or not as to that, Mr. Burry?

Mr. BURRY: Notice to produce the original is waived.

Q. Do you know F. V. Balch?
A. I received letters from him; I am not personally acquainted with him.

Mr. Burry asks Mr. Osborne whether this is all the correspondence that he proposes to produce, and Mr. Osborne answers that that is all that he knows of between Mr. Blatchford and Mr. Brown concerning this matter prior to the sale.

Mr. BURRY: I object to the introduction of the foregoing part of the correspondence because all of the correspondence is not introduced.

Q. Did you receive a letter from Mr. Blatchford dated the 21st day of January, 1881, of which this is a copy?

A. I did.

Q. Where is the original letter?

A. I am not able to say where it is; it was sent to Mr. I. R. Clarke, of Boston, on the 26th of January, 1884.

Q. Was Mr. Clark your attorney?

A. My attorney in Boston. I have talked with him about the letter and he has told me that he has searched for it and has not been able to find the original letter.

Q. Was that sent with the others?

A. It was; this is an exact copy.

Copy of letter offered in evidence, marked Exhibit 21, a copy of which is hereto attached.

215 Mr. OSBORNE: Mr. Burry, have you a copy of the contract that you were notified to produce between Mr. Meserve and Mr. Brown on the 9th day of January, 1877, and will you produce it?

Mr. BURRY: This notice was served on me on the 18th day of February, 1888. I have not the contract in my possession, and since the service of the notice have not had time to communicate with my clients and receive an answer.

Examination of J. B. BROWN continued on March 2, 1888:

Mr. OSBORNE: Mr. Burry, have you been able to produce the contract between Mr. Brown and Mr. Meserve that I asked you for and you said you had not found?

Mr. BURRY: I have never known of such a paper existing.

The examination of Mr. J. B. BROWN was resumed by Mr. OSBORNE as follows:

Q. Mr. Brown, did you have a contract with Mr. Meserve, one of the complainants in this cause, in relation to the real property which is mentioned in the mortgages which have been introduced in evidence as Exhibits A and B to the complainant in this case?

A. I did.

Q. Do you know where that contract is?

A. I do not.

Q. Did you have a copy of it yourself?

A. I did.

Q. What became of that copy?

A. I do not know; I have not seen it or been able to find it for the past four or five years.

Q. Have you looked for it in reference to this suit?

A. Looked for it a great many times.

Q. Was it, the contract, in duplicate?

A. Yes; in duplicate.

Q. Have you made any inquiry as to the other copy of that?

216 A. Yes; of Mr. Meserve.

Q. Did you find it or learn anything about it?
A. He said he was unable to find his copy.

The answer objected to as hearsay.

Q. Have you been able to produce the originals in any way?
A. I have not.
Q. Do you know of any other source; have you knowledge of any party of whom you could obtain it?
A. No; there is no other source that I know of beyond what I have investigated; I have been through all my papers and I have had searches made by my clerks of everything I have; I have had all my papers indexed within the past year, and in doing that I supposed I should find that very thing in going over them (there were several hundred papers), but I have been unable to find it.

Mr. OSBORNE: Mr. Burry, I do not know whether there is on the record a notice to produce that paper, but I believe there is; you admit that you were called on to produce it?
Mr. BURRY: I admit that I was served with notice on the 18th of February to produce a certain contract between Mr. Brown and Mr. Meserve, dated on or about the 9th day of January, 1877, relating to the purchase of lots 3 and 4 in controversy in this suit, and that I have not produced the same.

Q. Mr. Brown, have you any copy of that contract?
A. I have not.
Q. Do you know when the contract was dated?
A. The 6th day of January, 1877; the 6th or 9th; I think it was the 6th.
Q. Can you state the contents of that contract?

Objected to.

A. I can.
217 Q. Can you state the contents or the substance of it?
A. I don't know as I can give the exact language of it; I can give the contract, what the terms of it were.
Q. Will you please state what that contract was?

A. Mr. BURRY: I object to the witness stating the contents of the contract, first, because sufficient proof of loss of the originals has not been shown, and, second, because it is not competent or material.

A. The contract was between George W. Meserve and myself, and by the terms of the contract or by the contract I bought of Mr. Meserve two stores upon Purchase St., Boston, which should be for the sum of $30,000 each, each store having a mortgage of $19,500, bearing 6½ per cent. interest, which I was to assume and agree to pay, and I sold to him on the contract ten lots in Wright & Windette's subdivision, in Chicago, on 54th and Wallace street- and 102 lots in —— addition to Irving park, subject to mortgages, amounting, with interest, &c., to $11,100, which he assumed and agreed to pay, and I was to pay him $2,500 in cash besides; he was to complete

the stores the same as the stores adjoining, offices, &c., by the 15th day of February.

Q. Was that the entire substance of the contract?

A. It was; there may be some further details, but that is the general terms of the contract.

Q. Where was that contract made?

A. In Boston.

Q. Mr. Meserve is one of the complainants in this case; the same Meserve?

A. Yes; the same one; George W. Meserve.

Q. Mr. Brown, what was afterwards done, if anything, under that contract?

A. In March, about the middle of March or in that neighborhood, Mr. Meserve wished me to take a deed of the stores——

218 Q. Do you mean by wished that he asked you?

A. Asked; yes; and we agreed that I should take the deeds of the stores and he the deeds of the Chicago property, and that $1,500 of the $2,500 should then be paid, the other thousand dollars be placed in trust, to be paid to him when the stores were finally completed in accordance with the terms of the contract, and some interest on some of the property was adjusted, which was to be adjusted out of this thousand dollars.

Q. Well, what was done in relation to that matter further than that?

A. We agreed on that basis and the deeds were prepared. I requested him to make the deeds of the stores which I had contracted for to Mrs. Brown.

Q. That is your wife?

A. My wife.

Q. What else was done in relation to it?

A. There was some discussion on that matter, he raising the point that his contract was with me; that I had agreed to assume and pay the mortgages on the stores; that there might be an objection to his making the deed to Mrs. Brown, as he did not know her or anything of her and she was a stranger to this contract, and I agreed with him to give him my bond, which should make my responsibility upon the contract instead of the assumption in the deed.

Q. On what basis were you to make the bond?

Objected to.

A. By the contract I had agreed to assume the mortgages upon these stores to the amount of $19,500 each, and the objection was made that if the property was deeded to Mrs. Brown I should not be carrying out my contract, as he had no knowledge of her, and therefore required the bond. I recognized the claim and

219 agreed to give my bond to meet that responsibility.

Q. A bond for what amount? How was anything said in relation to that?

Objected to.

A. The bond was for $5,000; at least that was our first agree-

ment. I felt, too, that was ample to secure against any loss on the property——

Answer objected to.

—and we did agree upon $5,000 at first, but later Mr. Meserve raised the question that, as this bond was to stand in lieu of the obligation in the deed, it should be made $10,000. This was agreed to and a bond for that amount was given.

Q. Were the deeds delivered to you at the same time that you delivered the bond?

A. They were.

Q. Are those the original deeds? (Deeds produced by counsel.)

A. Those are the original deeds.

Mr. OSBORNE: It is agreed there -s no occasion for putting in evidence the deeds, as copies of them have already been introduced.

Mr. OSBORNE: Mr. Burry, have you the bond?

Mr. BURRY: I have not. I had it in my office, but in my hurry to come over here I mislaid it.

Mr. Osborne states that the original bond having been mislaid by counsel and not being here that the matter in relation to that will be postponed for the present.

Mr. OSBORNE: Mr. Brown, was the bond delivered at the same time that the deeds were delivered to you?

A. It was. I delivered to Mr. Meserve my deed of the Chicago property and my bond for $10,000 and received from him the two deeds for the two Purchase St. stores at the same time.

220 Q. Mr. Brown, have you a copy of the original deed from yourself to Mr. Meserve for the Chicago property?

A. I have a certified copy.

Q. You have not the original?

A. I have not the original.

Q. In speaking of the deed which you delivered to Mr. Meserve do you refer to the deed a certified copy of which is attached to your answer?

A. I do.

Mr. OSBORNE: I offer that certified copy in evidence, which is marked by the master "Exhibit 13." The instrument offered in evidence is a certified copy of a deed, dated the 6th day of January, 1877, between John B. Brown and Lucy T., his wife, to George W. Meserve, appearing to have been executed on the 14th day of March, 1877, which is attached to the original answer of John B. Brown, now on the files of this court.

Q. Mr. Brown, was your wife present when this transaction was had?

A. She was not.

Q. Did she ever have any connection or conversation in relation to the matter with Mr. Meserve or any person for him, so far as you know?

A. She did not; I don't think she ever saw him.

Mr. BURRY: The last part of the answer objected to.

Q. Did she ever see the deeds for this property?
A. I don't think she ever did.
Q. Did she at any time before they were executed or delivered have any knowledge of the matter?

Objected to this witness swearing to her knowledge.

Q. And, if so, what, so far as you know?

221 A. So far as I know, she never had any knowledge of this transaction previous to the time when the deeds were taken—until after the deeds were taken and the transaction closed, and then the only knowledge that she had that I know of was I informed her that I had taken the deeds of the two stores in her name.

Mr. BURRY: I object to this witness swearing as to what her knowledge was.

Q. Under what circumstances was it that you had the deeds made to her?
A. When we came to close the papers I asked Mr. Meserve to make the deed of the stores to her.
Q. Had you any authority, written or otherwise, or any communication with her in reference to the making of these deeds to her at that time?
A. I had not, nor had it ever come to my mind to have them made to her until we sat down to draw up the papers; never had been discussed nor thought of by me.
Q. Do you know at what time it was that these papers were delivered—what day or date? I see the acknowledgments differ from their date.
A. The papers were passed, I think, on the 20th of March.
Q. So far as your knowledge extends, Mr. Brown, when did your wife first know that there was any or was claimed to be any covenant on her part concerning the payment or indemnity against these mortgages?

Objected to.

A. It was when the Episcopal city mission brought this suit or a short time before that.

Q. What do you mean by that?

222 A. Well, there was some correspondence before that out of which the thing grew.

Q. This bill was filed—the suit was commenced about the 3rd day of December, 1886, Mr. Brown. How long prior to the commencement of the litigation in relation to this matter, if at all prior to that, was it, so far as you know, that your wife had any knowledge concerning this?

Objected to.

A. My general recollection is that it was some months; I don't remember; I have no definite recollection.
Q. Was it as much as a year?

A. I should not say it was.

Q. Your recollection is that it was not?

A. I don't know everything; the demand and the talk was with me and on my responsibility. I don't know that date now. When I said months I was thinking of what was in my own mind as to what their claims were.

Q. Did Mrs. Brown have any pecuniary interest in this property of any kind?

Question objected to.

A. None whatever. I bought the property and paid for it and handled it, put the money into it, whatever was put in.

Q. Mr. Brown, at the time these deeds were exchanged were the stores completed according to contract?

A. They were not.

Q. I have forgotten whether you have stated the time when they were to be completed.

A. They were to be completed, by the contract, by the 15th of February, but the completion was delayed for one cause and
223 another, and when the deeds were passed, in March, the stores were not then completed, but by an arrangement between Mr. Meserve and myself $1,000 was held back until they were finally completed.

Q. The completion was still going on?

A. Oh, yes; they were at work on them.

Q. But the contract was not a completed contract at that time?

A. Not at that time.

Q. By this deed, a certified copy of which has just been introduced, there appears to have been a certain mortgage indebtedness on the property assumed by Mr. Meserve; was that ever paid by Mr. Meserve?

Question objected to.

A. It was not.

Q. Did you pay any portion of it?

A. Yes; I did.

Q. Will you state, if you please, what amounts and the particulars of the payments that you made on account of that indebtedness assumed by Mr. Meserve? Give the items, dates, &c.

Mr. BURRY: Without repeating my objection every time, I want it understood that all this matter is objected to.

Q. The first indebtedness appearing to have been assumed was a note secured by a trust deed to D. K. Pearson, dated April 18, 1874, to secure your note for $2,500, dated April 18, 1874, running for five years, bearing 10 per cent. interest, the interest being assumed from April 18, 1875. What of those notes did you pay, and when, and how much?

A. I paid the two interest coupons of $250 each. The principal sum I did not pay. The note is standing against me yet—that is, I have not possession of it, although I may say I expect to get pos-

session. The property was foreclosed and was bought in by the party who held the note, and I have reason to believe that I
224 shall receive the note back.

Q. Was that satisfied by the property?

A. I don't know that it was, but I think it was. There were two $250 coupons which I paid, and those are in the Boston judgment.

Q. What do you mean by the Boston judgment?

A. I took up certain of those notes and sent them to Boston and entered suit against Meserve and procured judgment for the amount on the 25th day of June, 1879, and the amount of the judgment was $2,563.52 damages, and costs $43.09.

Q. These two coupons were taken up before that suit was commenced in Boston?

A. They were.

Q. The judgment issued on those coupons mentioned other indebtedness on the date that you have given?

A. Yes.

Q. Has that judgment ever been paid?

A. It has not.

Q. It included other of the same indebtedness?

A. Yes.

Q. The second item was "Trust deed to Peter Schleuter, trustee, of April 1, 1875,to secure eight notes of yours in all, amounting to $3,465.70, running for one year and extended for one year, interest being 10 per cent. What of those notes did you pay or take up?

A. I paid all of them.

Q. When?

A. At different times.

Q. Have you those notes?

A. I have some of the notes, and some are are included in the Boston judgment I have just referred to with the coupons.

Q. What notes have you?

A. I have one note of Peter Schleuter for $557.92, interest
225 at 10 per cent. until paid; one note of Edward Eichoff, 357.05; note of William Hackler, 119.27; note of Charles Miller, 940.11. These are four of the notes referred to as security by the mortgage to Peter Schleuter and a portion of the $3,465.

Q. Where was the remainder of these notes, if you know?

A. They were sent to Boston and are covered in the Boston judgment, of which this is a transcript.

Q. And were probably filed there?

A. Were filed in the suit.

Q. Had you paid all these notes?

A. I had, and interest at 10 per cent.

Mr. BURRY: To the time of payment?

A. Yes.

Q. Another indebtedness mentioned here is a trust deed, dated July 26, 1876, securing your notes for $3,060, running two years from date, with interest at the rate of 8 per cent. per annum to George A. Follansbee, on which it is recited that $2,680 had been paid and cancelled. Was that indebtedness paid by Mr. Meserve?

A. It was not.
Q. Or any part of it?
A. None of it.
Q. That would be 380, wouldn't it?
A. Yes.
Q. Have you paid that or are you the holder of that indebtedness?
A. I am the holder of the indebtedness; have got the notes here.
Q. Have the notes there?
A. Yes.
Q. Will you state what notes there are; are those the notes that you speak of there? How many of them are there?
A. Thirteen.
Q. Thirteen notes of $30 each?
A. Thirteen notes of $30 each, $390.

Q. Did you pay any expenses in connection with that in-
226 debtedness other than the notes themselves.

Objected to as incompetent.

A. I did.
Q. How much?
A. I can't say how much; I paid a good deal.
Q. Did you pay attorneys' fees?
A. I paid attorneys' fees.
Q. You were sued on that indebtedness?
A. On some of it I was.
Q. You paid atterneys' fees to whom?
A. I have one item here of $165 paid to Cooper, Packard & Gurley.
Q. Did you pay that?
A. I paid that.
Q. When?
A. I think it was July 14, 1879. There were a good many other items that I was unable, in going through my accounts, to collect and bring in shape.
Q. What was this indebtedness of attorneys' fees paid for?
A. I was sued on the notes and they were attorneys' fees in the case.
Q. In defense to the case?
A. Yes.
Q. You finally had to pay them all?
A. I paid them all; yes.
Q. How much was the total amount of the items paid on this various indebtedness? Will you summarize it? Is this a computation made under your direction?
A. That shows the amounts paid and interest upon the same to February 20, 1888.
Q. That is at 10 per cent. on the Schleuter notes (four of the Schleuter notes) and 6 per cent. on the Boston judgment against Meserve?

A. Yes; and eight per cent. on the Follansbee notes and six per cent. on the expenses I made to Cooper, Packard & Gurley.

Q. The amount of that Boston judgment was how much?

A. $2,606.61.

227 Q. Mr. Meserve has paid no part of it?

A. No part.

Q. Mr. Brown, I hand you a paper produced by counsel for complainant, an original paper. Is that the original bond that you spoke of?

(Bond handed to witness.)

A. It is.

Q. Whose handwriting is that in?

A. Mine.

Q. Where was it executed?

A. In Boston.

Q. Is that the bond you gave to Meserve?

A. It is.

Q. Who was present when these deeds were delivered and the bond made?

A. Well, the bond was made in my office, or where I had a desk. I was in Boston somewhat that winter, and had a desk in an office building on Exchange Place, and these papers were prepared in, I believe, my office. Mr. Meserve, Mr. Clark, the broker, and myself were present.

Q. Mr. Clark, the witness to that bond, was the broker?

A. Yes, sir.

Q. Between you and Mr. Meserve?

A. Yes; he witnessed the bond.

Q. Is that his signature to the bond?

A. Yes; that is his signature.

Q. Do you remember whether Mr. Meserve brought a bond there to you at that time for you to sign, another one filled up?

A. He did not; this was the only bond.

Q. Was there not one prepared?

A. No, sir; there was not.

Cross-examination by Mr. BURRY:

Q. Mr. Brown, what was your business in 1877?

A. It was collecting some debts that were owed me by different railroad companies for work that I had done for them in previous years.

Q. You had an office in Boston?

A. I was in Boston during the winter of 1877–'8, and I had
228 a desk in an office building on Exchange Place at that time, where it suited my convenience to do my correspondence.

Q. Were you in any other business than collecting your own claims at that time?

A. No, sir,

Q. Where is this P. L. Clarke?

A. That I do not know.
Q. What were your circumstances in 1877, financially?
A. Do you mean what was my balance sheet?
Q. Were you insolvent?
A. I was not.
Q. Had you not been insolvent?
A. I had never been insolvent in my life.
Q. How long had you known Meserve before you made this trade with him?
A. But a few days or more; perhaps, a few weeks; I don't remember.
Q. Was your reputation in Boston financially good at that time?
A. I don't know. I never had any occasion to ascertain. I owed no money in Boston and I was borrowing none in Boston, so I do not know what my reputation might have been.
Q. What was your reputation in Chicago?
A. That I cannot tell.
Q. Were you supposed to be, so far as you knew, a man of means?
A. I do not know what people may have thought of me; I will simply say that as far as my property is concerned I probably had three times as much assets as I owed.
Q. At that time?
A. Yes.
Q. You so reported it to Mr. Meserve?
A. No; I did not report anything to him. I had no occasion to report anything to him.
Q. He took it for granted that you were?
A. I simply bought the property of him.
229 Q. He supposed you could pay $19,500 on each of those lots?

Objected to.

A. That he never discussed whether I could or could not.
Q. How long before this had Meserve bought the property from the mission?
A. That I do not know. I didn't make any inquiry.
Q. When were the mortgages which you assumed executed?
A. That I don't know.
Q. You didn't inquire at that time?
A. I do not know now.
Q. You did not know then?
A. I didn't know then.
Q. You didn't know then how long they were to run?
A. I understood they were to run three years.
Q. Did you know when they had been made?
A. I assumed that they were made. There was nothing said to the contrary. I bought the property and I understood there was $19,500 mortgages on it, but I had no knowledge as to when the mortgages were made.
Q. And the mortgage was to be $19,500 for each store?

A. I understood it was—they were.

Q. In your direct examination you said it was to be; isn't that a fact?

A. I understood the mortgage was on the property when I bought it. I had no knowledge to the contrary until later. I never saw the mortgages, but by my contract I was to assume the mortgages of $19,500.

Q. Did you examine the title to this property when you bought it?

A. I did when they passed the deeds.

Q. You had it examined before they passed the deeds?

A. Immediately before; some time in March.

Q. Before the deeds were passed then you knew what the
230 title of the property was?

A. My attorney examined the title at that time when we closed the transaction—just before we closed it up—and went with me to the recorder's office—our deeds were actually transferred in the recorder's office.

Q. Do you know, in fact, when Meserve bought this property?

A. I do not.

Q. Did you not find out at that time?

A. No, sir; I had no occasion to find out.

Q. Did you not find out what his title to that property was?

A. I did not; I found the title was good in him at the time I passed the deeds—when we passed the deeds.

Q. You said that at the time Meserve and you were talking about making your deeds to Mrs. Brown, that he objected?

A. Yes.

Q. Because there might be trouble, you having agreed to assume the mortgage?

A. I did.

Q. And they knew nothing about her responsibility?

A. What do you mean by "they"?

Q. I ask who you mean by "they"?

A. I didn't mean any one. I never said "they" that I am aware of.

Q. You learned from whom he bought the property?

A. I understood that he bought it from the Episcopal city mission—that the mortgages ran to the mission.

Q. And that he had talked with them about accepting your mortgage?

A. No, sir.

Q. Accepting your assumption?

A. No, sir.

Q. You say there was no such talk between you and Meserve?

A. No such talk; there was never any talk between Meserve and myself in regard to the mission, in reference to my dealing with him
at any time. I bought the stores of him, sold him my prop-
231 erty, and assumed certain mortgages.

Q. Did you learn from him that he could make the trade

if the person to whom the land was sold was acceptable to the city mission?

A. No, sir; that never was discussed; nothing of that nature was stated to me or intimation to that effect.

Q. But you were supposed to be good?

Objected to as an assumption not authorized by the evidence.

A. Supposed by whom, myself?

Q. By Meserve, with whom you were trading?

A. He never said anything to me to the contrary but what he supposed I was good for my contract.

Q. Did you tell him you were the owner of a good deal of property in Chicago?

A. I told him I was the owner of the property I was selling him.

Q. Of a good deal of property in Chicago?

A. I don't think I did.

Q. You gave him to understand, di-n't you, that you were a man of ample means?

A. I don't think that that was ever discussed. I am not aware that it was. I don't think I ever represented to him that I owned a large amount of property, because I think that was all the property I did own that I was selling him.

Mr. OSBORNE: Real property.

A. Yes.

Q. Why did you ask that the deed be made to your wife?

A. That I cannot tell. I don't know why it was done.

Q. Were you in the habit of doing such things?

A. No, sir; never had a piece of property deeded to her in my life.

Q. That is the only time?

232 A. I think it is the only time, except a house that we lived in some twenty-five years ago was deeded to my wife. That is the only piece that I remember deeding to my wife. It came to my mind and I made the request as we were making the deeds.

Q. Did you have any money in your hands of hers?

A. No, sir.

Q. Was she possessed of real estate?

A. She was not. I don't know that she ever had a dollar in the world.

Q. What were you worth at that time?

Objected to, and the witness is advised by counsel that he is not called upon to *the* answer the question.

A. I shall have to go to my books and make up an account.

Q. Were you insolvent at that time?

A. I was not; my assets were probably three times, if not more, than anything that I owed.

Q. When did the crash come?

A. In 1875–'6.

Q. Your crash, I mean.

A. What do you refer to?

Q. When did you become embarrassed?

A. You ask me when I became embarrassed. I am not aware that I was embarrassed. I had no debts — what I had arrangements with parties I owed in reference to. I was collecting what was due me.

Q. You have stated, as I remember, that you made an arrangement with the officers of the city mission by which they were to take this property and hold it for you in trust, sell it for the most they could, pay themselves, if they could, out of it, and turn over to you the balance. Am I correct?

A. Generally correct. It was that they were to sell it for the best they could, and if they could get my money out of it that I
233 had put in that they would do so or whatever they could.

Q. In the supplemental answer filed by you in this case you said that you agreed to deliver possession of the premises to the mission on certain conditions, and that thereupon you did deliver possession to the city mission. With whom was that agreement made?

A. John S. Blatchford, treasurer.

Q. When was it made?

A. It was made in the fall or winter of 1877–'8.

Q. Where was it made?

A. In Boston.

Q. At what place?

A. At his office, I think.

Q. Where?

A. I think it was the street that leads off of State St., just back of——

Q. The same office he now occupies?

A. I don't know what office he now occupies. I think it was Exchange St.; that is my impression.

Q. Who were present?

A. I have no knowledge of any one but Mr. Blatchford being present. My talks were with him.

Q. Had you ever had any previous conversation with anybody else besides in regard to making such a trade?

A. Such a trade? I understand you mean by trade turning the property back into the hands of the mission, do you?

Q. Yes. Do you know Robert Paine?

A. I do.

Q. Did you have any correspondence with him on that subject?

A. On this subject?

Q. On that subject.

A. I don't remember that I did. I had interviews with him in reference to the interest money.

Q. To whom did you deliver possession?

A. To Mr. Blatchford.

234 Q. Where?

A. As far as the delivery of possession it was at the time of our talks.

Q. How did you deliver possession?

A. By agreeing to turn the property over to him, and he to collect

the rents and taking care of the property, and to effect a sale if he could.

Q. That was in the fall of what year?

A. It was—I won't say the fall—the fall or winter of 1877–'8.

Q. How did you formally turn it over; did you deliver the keys?

A. No.

Q. What did you do?

A. The property was occupied by some parties at that time.

Q. Did you direct them to pay over to him?

A. I don't remember about that.

Q. What did you do towards turning possession over?

A. We had a conversation that I have before testified to, and it was agreed——

Q. My question is about your turning over possession.

A. That he should have control and collect the rents from that time on; take charge of the property and sell it.

Q. How did you turn it over to him; what did you do?

A. In that way it was done. From that time I had nothing to do with the property; I suppose he did.

Q. You knew at the time they entered into possession or pretended to take possession that they did it under your agreement?

A. It was at that time by our agreement; I had that understanding with him about it; the property from that time on I never had.

Q. Your transactions with Mr. Blatchford were after your transactions with Mr. Paine, were they not?

235 A. Mr. Paine—the transactions that I have a recollection of, principally, were in reference to the interest on the mortgages; they were in the fall of 1877.

Q. Just answer my question. Your transactions with Mr. Blatchford were after your transactions with Mr. Paine?

A. In reference to the interest?

Q. In reference to the property.

A. I think they were, as far as I now recollect.

Q. And Mr. Paine turned you over to Mr. Blatchford, didn't he?

A. No, sir; nothing of that nature; at least I have no memory of that.

Q. After you quitted Mr. Paine you didn't go to Mr. Blatchford and then back to Mr. Paine?

A. I don't remember of my dealings with Mr. Paine were in reference to the interest in reference to some bonds that I had which we were negotiating. I was wanting him to purchase a lot of bonds that I had, and which he eventually took (two of the bonds) for the interest.

Q. Will you examine your letter book and see whether you wrote to Mr. Paine on the 23rd of March, 1878?

A copy of the letter of March 23, 1878, read to the witness and marked "Complainants' Exhibit A."

A. I do not recall it by myself; I assume that to be correct.

Mr. OSBORNE: You think you did write that letter?

A. I think I did.

Mr. OSBORNE: I object to the letter without the introduction of the original to which it is a reply.

Mr. BURRY: I here give you notice to produce the letter from R. T. Paine to John B. Brown of March 23, 1878.

236 Q. What proceedings do you refer to in that letter?

A. I do not now remember; if I saw the original letter I could tell.

Q. Isn't it a fact that the mission had entered into possession under the mortgages before you had anything to do with Mr. Blatchford in this case?

A. No, sir; it was not.

Q. Isn't it a fact that the proceedings referred to in this letter was the entry under the mortgage?

A. I think that it is; that is the reason I said if I saw the original letter I could see what was referred to.

Q. Did you ever make to Mr. Paine a proposition such as you made to Mr. Blatchford and was accepted by him?

A. I don't think I ever did.

Adjourned to 11 o'clock a. m., March 3rd.

Cross-examination continued by Mr. BURRY, March 8, 1888:

Q. Mr. Brown, have you prepared a statement showing the amount of moneys paid by you on the indebtedness assumed by Mr. Meserve?

A. I have here a statement which covers certain moneys that I paid on account of the mortgages Meserve assumed; it is this statement.

Q. Have you made it an exhibit in this case?

A. I do not remember. I supposed it was in. I didn't know but what it was.

Q. Do you now make it an exhibit?

Mr. OSBORNE: Mr. Brown, this statement was prepared under your direction, was it?

A. It was.

Q. At whose suggestion?

A. At yours.

Q. And this is the statement that you used as a memorandum in your original testimony?

A. It is.

237 Mr. OSBORNE: I offer the statement in evidence marked Exhibit 14, and it is hereto attached.

Q. Does that Exhibit 14 correctly state the account of the moneys paid by you on the indebtedness assumed by Mr. Meserve, excepting as to the last item for attorney's fees?

A. These amounts that are stated on this account have been all paid by me and the account as shown there is correct as to those amounts stated.

Q. Have those amounts all been paid in cash?

A. They have.

Q. What do you mean by cash; what we usually mean, currency or check?

A. Some of the amounts were paid in cash and some in bonds. I will make that my answer for the cash.

Q. The amounts paid in bonds are usually set down at the par value of the bonds, are they?

A. They are.

Q. The deed which you conveyed to Meserve conveyed the property subject to three incumbrances, did it not?

A. It did.

Q. One to D. K. Pierson and two to Follansbee?

A. Yes; there was one to Schleuter, also one to Pierson, one to Peter Schleuter, and two to Follansbee.

Q. Four incumbrances?

A. Yes.

Q. The four incumbrances are not all mentioned in this account?

A. They are not.

Q. Why?

A. One of the incumbrances I suppose I shall be released from.

Q. What incumbrance is that?

A. That is the one to D. K. Pierson; that is the note, the principal note. The interest coupons upon the note are, some of them that I have paid, covered in that account. They are in the
238 Boston judgment.

Q. Will you tell me just what items are included in the Boston judgment?

A. Two coupon notes of the D. K. Pierson mortgage, $250 each; a note to Kuhr & Schaffer of $117.05; a note to Gottlieb Klien, $230.02; a note to H. G. Deifenbeach of $770.28.

Q. The amount of the items as stated by you, Mr. Brown, is $1,717 and some odd cents; the amount of the judgment referred to by you as stated in this account is $2,606.61. How do you account for the difference?

A. The difference is in the interest that had accrued upon these notes previous to the date of the judgment and the costs of the suit.

Q. Will you prepare a stat-ment showing just the amount of the items and the interest on each up to the date of the judgment?

A. Yes; I will prepare a statement.

Q. These three notes to which you refer, the Kuhr & Klein and Deifenbach, are notes which are secured by the Schleuter trust deed and which you had paid previously to the entry of the judgment?

A. I had.

Q. Are the amounts stated by you the full face of those notes?

A. They are.

Q. And $250 is the face of the coupons, is it?

A. It is.

Q. Did you pay these notes?

A. In cash, do you mean?

Q. The coupon notes, first?

A. I did not; I paid those by a new note or another note that I gave.

Q. To whom did you give that note?

A. That I can't remember, the holder of it.

Q. Did you pay it in cash?

A. The note?

Q. The note.

A. I paid part cash and part bonds.

Q. How much in bonds and how much in cash?

239 A. I paid the coupons in the judgment and interest, $102.50, making a total of $852.52. I paid the bonds and interest on the bonds at the date of payment, $541.25; cash, $155.25, stock, $200, making a total (taking in the stock at face value) of $896.50.

Q. And in this account you have included this $896.50?

A. No; it was only—there is one coupon and interest that I have paid that is not included in this account.

Q. Was this third coupon assumed by Mr. Meserve?

A. It was not, and is not charged in the account; only those that he did assume are charged in.

Q. The amount which was included in this judgment was the two coupons and the interest thereon?

A. It was.

Q. And you have treated the account as if you had paid that in cash?

A. I have.

Q. What stock was this?

Objected to as irrelevant.

A. It was some car-company stock.

Q. What car-company stock?

A. The Chicago Portable Track and Car Company.

Q. What was it worth at the time you bought it?

Objected to as irrelevant.

A. I do not know.

Q. Had it any market value so far as you know?

A. I do not know.

Q. Was it received at any particular price?

Objected to as irrelevant.

A. It was received for about $100.

Q. Expressly?

A. Your question is too concise for me to answer.

Q. Was any price fixed on the stock in the settlement?

A. Well, this certificate of $200 was received in the settle-

240 ment for this amount of money, $156; there was a price of $102.

Q. To what book are you referring?

A. The memorandum book that I had at the time that I made these payments in which I made my entries.

Q. Do you find there an itemized statement of what was paid by you on this settlement?

A. These coupons?

Q. On this particular settlement we are talking about—these coupons?

A. I do.

Q. In that itemized statement is the price set upon the stock $102?

A. I have read you the full itemized statement.

Q. Just answer the question.

A. The stock charged in the statement is $200, as being the nearest fraction to the balance of the account that could be made, and was given in payment of the balance of the account above the bonds and the cash, which amounted to $102.

Q. It was a lump settlement, was it, Mr. Brown?

A. There was so much bonds and so much cash and so much stock percentage. The items are in detail, but it stated in full the amount.

Q. Did the parties accept the bonds or the stock at any particular price?

A. They accepted the bonds at par, and the stock, there were different amounts—this party accepted the stock for $102.

Q. Expressly?

A. Yes.

Q. Who was the party?

A. Pinkney W. Ellsworth.

Q. Were your negotiations with him personally?

A. I don't remember.

Q. Let me refresh your recollection. Were they not in Chicago, in the office of D. K. Pierson & Company?

A. I think they were.

Q. Who was present with whom you transacted the business?

A. My impression is it was D. K. Pierson, though I cannot remember now. Of course I could refresh my recollection.

241 Q. Was it not young Pierson, now of Pierson & Taft?

A. I don't think it was.

Q. You say that he accepted the bonds at par and the stock for $102?

A. Yes.

Q. What became of the other note, the principal note?

A. Well, I don't know what did become of it.

Q. Was anything said at the time you settled for those coupons?

A. That I don't remember.

Q. Why do you say you expect to get up that note?

(Objected to as irrelevant.)

A. Because I have been trying to find it for some time. I learned that the property was foreclosed and I think that the note was cancelled, though I do not know.

Q. Why do you say that the note is standing against you yet?

A. Well, for the reason that I have not been able to find the note,

and I know I made it. I think I stated in my direct examination that it was standing against me, but that I expected to get it back.

Q. You say that it is standing against you?

A. I expect to get possession of it. I have reason to believe that I shall get the note back.

Q. What reason have you to believe so?

A. From what I have learned about that. I have not learned definitely when the mortgage was foreclosed. The property was bid in by the party who held the mortgage, and, I think—I don't know this definitely—I think it was bid in for the amount of the note, though I do not know.

Q. If that was so, then the note would be cancelled?

A. If that were so.

242 Q. For what reason do you expect to get it back?

A. The parties who had the carrying on of the transaction for Ellsworth said if they could find this note and if it was cancelled by the purchase of the property they would return it to me; that is the only reason.

Q. You have seen them since?

A. Yes; I have seen them several times within the past three months.

Q. Then why do you say that the note is standing against you?

A. For the reason that when I give a note and it is outstanding, as far as my knowledge goes, I do not know that it is cancelled. I should say that it was standing against me, but I also explained by saying that I supposed I should get it back.

Q. Didn't you know that at the time you settled for those two coupons that the whole incumbrance was settled for?

A. I don't now remember it.

Q. Don't you know that the whole thing was agreed upon between you and Pierson, and when this settlement was had that you told them that a quitclaim deed could be had of this property from Meserve?

Objected to as irrelevant.

A. I don't remember it; it is possible it was so; I would not say it was not.

Q. Didn't you write to Meserve and ask him to sign a quitclaim deed for that property?

A. That I don't now remember.

Q. The second incumbrance mentioned in the testimony is the Schleuter mortgage; what were those notes given for, Mr. Brown?

A. They were given for supplies that were furnished by different parties, or the parties to whom the notes were given, in the construction of the Chicago & Southern railroad.

243 Q. How were those notes paid?

A. The first notes that are covered in the Boston judgment I paid by another note, and the last notes that are enumerated by that statement I paid in cash and bonds and stock.

Q. The stock was of the same kind as was mentioned before?

A. Yes.

Q. And the bonds were of the same kind as mentioned before?
A. The same, and the cash was the same kind.
Q. Were all those notes settled for at the same time?

Objected to as irrelevant.

A. No; those mentioned in the Boston judgment were taken up some considerable time before the others.
Q. Were the others all settled for at the same time?
A. These in the statement?
Q. Yes.
A. Yes; they were.
Q. When was that?
A. The 15th of August, 1878.
Q. How were they paid for?
A. In cash and bonds and stock.
Q. How much cash?

Objected to as irrelevant.

A. I paid Peter Schleuter on the 15th of August, 1878, note, $557.92, interest at 10 per cent., $169.72, making a total payment of $727.64.
Q. That is not responsive to my question.
A. That is as far as I can answer it; I have no detailed memorandum of this payment, how it was paid.
Q. Then, you can't tell me how much of the notes that are not included in the judgment, how much you paid in cash and how much in bonds and how much in stock?
A. I have no details.
244 Q. Have you any recollection?

Objected to as irrelevant.

A. I have no detailed recollection.
Q. The notes which are not included in the judgment were all settled at one time, were they?
A. They were settled at about one time.
Q. Did you conduct the negotiations personally?
A. I did.
Q. Where were they had?
A. Here, in Chicago.
Q. In what office?
A. That I am unable to remember.
Q. These noteholders all met there?
A. Oh, no.
Q. Who acted in their behalf?
A. I suppose they acted for themselves.
Q. Then they were not all settled at the same time?
A. They were not. They were settled at about the same time, but not at any one place, by different parties at different places.
Q. Did you pay each man separately?
A. I think I did.

Q. Did you put up bond or bonds with a certain person for all the noteholders?

A. No; I settled with each one. That is my remembrance, a transaction with each party.

Q. You think you did not put up a bond with Mr. Diefenbach?

A. Well, I paid him a bond.

Q. How much was Mr. Diefenbach's claim?

A. $770.28 principal and interest at 10 per cent., $253.49, making $1,023.27.

Q. How did you pay him?

A. I paid him in cash and bonds and stock.

Q. You can't have given him very many bonds?

A. No.

Q. How many bonds did you give him?

A. I will see if I have the details of it; perhaps I have. When I say bonds I do not mean that I gave him any number of
245 bonds, but I paid him in bonds and cash.

Q. You paid him a thousand dollars in bonds, then?

A. I have no detailed statement of how it was paid; I have just that item of the amount that I paid.

Q. You don't know whether you paid him in any stock or all in bonds?

A. I have a remembrance that I paid him part in cash, part in bonds, and part in stock.

Q. If you paid him in bonds at all you must have paid him a thousand dollars in bond?

A. Not necessarily.

Q. Were there bonds less than a thousand dollars?

A. The coupons on the bonds.

Q. Are there any bonds for less than $1,000?

A. The bond itself was $1,000.

Q. If you gave him a bond there was very little left?

A. I think that he and another party were interested in the bond that went to him—another party that I paid.

Q. One of those noteholders?

A. Yes. I think they took a bond together; that is my remembrance.

Q. Isn't it a fact that you put so many bonds with one individual to secure all these notes?

A. No; it is not a fact.

Q. How much stock did you pay on these notes?

Objected to as irrelevant.

Q. I mean those that are not included in the judgment?

A. I have found the memorandum entry. The bond was given to Mr. Diefenbach and to another party, Kanzler & Klein. The total amount of Diefenbach's including interest was $1,023.27, and his share of the bond was $696.15, cash $163.83, and stock $163.29.

Q. What was the date of the settlement with Diefenbach?

246 A. Well, it was about the 15th of August, near that date.

Q. How did you pay Charles Miller?

Objected to as irrelevant.

A.—

Charles Miller note	$940 11
Interest	310
Making	$1,250 11
Paid him on bonds	$850
cash	$200
stock	$200

Q. When was that settlement?

A. About the 15th of August or in that neighborhood.

Q. How did you settle with Schleuter?

Objected to as irrelevant.

A. I have no detailed account of that. I find the entry of his share in the bond is $467.52, and the total amount was $727.64.

Q. Did he also take some stock?

A. I don't find any entry; he did take some stock; that is my remembrance.

Q. You don't know how much?

A. I have some items here under initials. I think that I paid $110 in cash and $100 in stock, though I am not certain of that amount.

Q. Have you a memorandum that you paid $110 in cash?

A. No; I have not, not that I can rely on; but I remember the fact that I did pay him a certain amount of cash.

Q. That settlement was also about the 15th of August, 1878?

Objected to as irrelevant.

A. Yes; it was about that time.

Q. How did you settle with Kantzler & Klein?

247 A. Kantzler & Klein is $374 principal, $123.26 interest; making $497.26 principal and interest; paid in bonds, $338.13; in cash, $79.56; in stock, $79.

Q. Do you get this data from your memorandum or by computation?

A. I get it from my memorandum. The bond was in with another account; it covered both the Kantzler & Klein and another one. I had to take out his share to get the detail.

Q. How did you settle with Eichoff?

Objected to as irrelevant.

A. Eichoff, $357.05 principal; the interest was $117.90; total, $464.95; that was paid in bonds, $316.16; in cash, $74.39; in stock, $74.

Q. How did you settle with Hickler?

A. My recollection is that the Hickler note was assigned by him to some party and I think that the party sued me in the justice court on that. I think that was settled in court.

Q. How did you pay it?

A. I don't remember. I think I paid it in cash.
Q. How much did you pay him?
A. The face of the note and interest.
Q. Have you included it in your account?
A. Yes.
Q. How much is it?
A. $119.27 principal.
Q. You have computed interest on it at 10 per cent.?
A. Yes.
Q. When was the judgment obtained?
A. That I do not now remember.
Q. What was the amount of the judgment?
A. It was the face of the note and interest at 10 per cent. until the date of the judgment.
Q. If you will look at the back of the note perhaps your memory may be refreshed.
A. The memorandum on the note says "the amount of the judgment is $131.20; costs, $5.00."
248 Q. Do you know before what justice this judgment was entered?
A. I don't remember.
Q. Have you a memorandum of having paid that amount?
A. I have none that I know of—I now find it. The note was assigned by Hickler to Jarger, and I paid Jarger.
Q. How much?
A. I paid $119.27 principal, and interest, $38.22; total, $157.49.
Q. When did you pay it?
A. About the 15th of August, 1878.
Q. How do you arrive at that amount?
A. Bonds, $102.25; cash, $25.32; stock, $30.
Q. That is how you paid it?
A. Yes, to Jarger; I paid Jarger.
Q. Then you wish to correct that previous statement that you paid it in cash?
A. I had not found any entry in my book to Hickler. When the note was shown me I found it was transferred to Jarger and I turned to my book and found the entry to Jarger.
Q. How did you pay Klein?

Objected to as irrelevant.

A. I paid him by another note.
Q. When?
A. I don't remember.
Q. How did you pay that other note?

Objected to as irrelevant.

A. To Klein I paid $125 principal; interest, $9.37; total, $134.37. I can't give the details of that. I paid it in cash and bonds and stock.
Q. About the 15th of August?
A. Yes.

Q. In about the same proportion as the others?

A. That amount, however—there was some one else that had an interest in it; he had given an order on some one to me for a portion of it that I paid to another party. I paid the amount of the note and interest at 10 per cent. in cash and bonds and stock.

249 Q. In about the same proportion as the others?

A. Yes.

Q. At about the same time?

A. It was about the middle of August, 1878.

Q. Kuhr & Shaffer, how did you pay them?

A. Principal, $117.05; interest, $38.50; total, $155.55; in bonds, $105; in cash, $24.89; stock, $25.

Q. What bonds were they?

A. They were township bonds, Illinois township bonds.

Q. Seven Hickory?

A. Seven Hickory township bonds.

Q. Railroad aid bonds given by the township of Seven Hickory, in what county?

A. I think Coles county. I will not be sure about it.

Q. The bonds were then in litigation, were they not?

A. They were.

Q. These notes which you have just testified that you paid in cash, bonds, and stock include all the notes which are included in the Boston judgment except the two coupons for $250 each?

Objected to as not a proper question and as not material to the issue.

A. They do.

Q. They were all paid about the 15th of August, 1878?

A. No; the notes in the Boston judgment and the coupons were paid some time previous to that.

Q. I am not asking you about the coupons.

A. They were paid altogether.

Q. They were notes which you subsequently paid about the 15th of August, 1878?

Objected to as irrelevant.

A. They were.

Q. In the same way as the others?

A. In the same way.

Q. What interest did these notes which you gave in payment bear?

Objected to as irrelevant.

250 A. The same interest that the original notes bore we took up—10 per cent. interest.

Q. The last item in Exhibit 14 is for attorneys' fees in Meserve, Eichoff, and Klein cases? These cases were suits brought on those notes against you?

A. Yes.

Q. Which you defended?
A. Yes.
Q. And the attorneys' fees were for defending those suits?
A. They were.
Q. What was your defence?
A. I don't now remember.
Q. You didn't have any defense, did you?

Objected to.

A. I don't remember; it is a good many years ago.
Q. You can't now remember any defense that you had?

Objected to.

A. I do not now remember anything about it.
Q. Were they cases before a justice?
A. No; they were not before a justice.
Q. What court were they in?
A. I don't remember.
Q. Did you have a trial there or did they go by default?
A. That I don't remember. I remember that I was sued. I remember that I paid the notes.
Q. Did you ever sign an affidavit of merits?
A. I don't remember anything about that; my head has been too full of other things since that time.
Q. What has become, Mr. Brown, of the indebtedness secured by the trust deed to George A. Follansbee, dated July 26, 1873?

Objected to as irrelevant.

251 A. That was taken care of in a contract between myself and Kirk B. Newell, we having had several transactions together, and we settled between ourselves by his taking care of this particular indebtedness and I taking care of some other specified in the contract which was carried out between us.
Q. Do you make any claim under that incumbrance?

Objected to. The papers will show the proper evidence of the claim.

Q. Where is that contract?
A. I have it.
Q. Will you produce it?
A. I will.
Q. What has become of the indebtedness secured by the trust deed to George A. Follansbee, dated July 26th, 1876?
A. I hold $390 of the notes and the other portion was cancelled at the time the trade was made with Mr. Meserve. I procured the cancellation of them.
Q. Did you pay those notes?
A. I owned most of them.
Q. At the time of this trade?
A. Yes. They were outstanding as collateral security. Some of them were owned by other parties, but those that were owned by

other parties I have taken up and paid and those that were outstanding as collateral security I have taken up.

Q. Which of them were outstanding?

Objected to as irrelevant.

A. Well, they were all outstanding.

Q. You said you owned some of them at that time?

A. They were accepted as collateral security at that time. They were all outstanding against me at that time.

Adjourned to 2 p. m.

252 *Afternoon Session.*

The cross-examination of Mr. BROWN continued by Mr. BURRY:

—. Mr. Brown, have you ever paid anything on account of the indebtedness secured by the trust deed to Follansbee, dated July 26, 1873?

A. Only what I paid in this contract with Newell.

Q. How much have you paid?

A. I paid at one time——

Question objected to.

A. I paid at one time $3,613.12. I paid sundry items amounting to something like $2,100 between those dates.

Q. What dates are those?

A. It is between July, 1878, and June 19, 1884.

Q. To whom did you pay that money?

A. I paid $3,613.12 to either the clerk of the court or to the attorney of H. G. Abbott, who held the notes of Newell which I had agreed to take care of, these Follansbee notes that are secured by this mortgage.

Q. You never paid any money to the owner or holder of those notes?

Mr. OSBORNE: What notes?

A. The notes secured by the trust deed of 1873—take care of those and take care of the others by our contract?

Q. You don't know, then, anything about how much has been paid or whether anything has been paid on account of those notes?

Objected to, as the contract will speak for itself.

A. No.

Q. You have never paid anything on account of those notes?

Objected to because the matter is irrelevant.

A. I paid nothing on the Wetherell notes, but paid on the Abbott notes as set forth in the contract. I knew nothing about those notes from that time we made our contract that he was to take care of them and I agreed to take care of the others, and I know
253 he did take care of them.

Q. Who was the owner of those notes?

A. The Wetherell notes?
Q. Yes.
A. I do not know.
Q. At the time this land was deed- to Meserve who was the owner?
A. Rebecca Miner.
Q. Do you know whether the notes have ever been paid?
A. I do not; I never heard of them since we made our agreement.
Q. Do you know whether they have been foreclosed?
A. I do not.
Q. Do you know who is now the owner of the land?
A. I do not.
Q. Do you know W. K. Gillis?
A. I do not; I don't remember that I do.
Q. Do you know Richard Barton?
A. I do not.
Q. Do you know when Rebecca Miner ceased to own those notes?
A. I have never known anything about the notes since we had our agreement.
Q. Do you know what has become of the land mentioned in the mortgage to Schleuter?

Objected to as irrelevant.

A. What do you mean by that?
Q. Who owns it?
A. It is now a portion of the Western Indiana railway right of way.
Q. You don't know whether Meserve or his assigns paid the indebtedness secured by the trust deed of 1873 or not?
A. I do not; at the time I made the arrangement with Newell it had not been paid, but since that time I do not know whether it has or whether anything has been done about it.

Redirect examination:

Mr. OSBORNE: Mr. Brown, what was your arrangement with Mr. Newell that you speak of?

Objected to as incompetent.

A. There were quite a number of notes made by Newell secured on different pieces of property that I was an indorser on.
254 Suits were brought against me on some of them, and he came out here. He lived in New York, and made the proposition that he would take care of sundry notes if I would others. We made that agreement——

Objected to, as it appears this contract is in writing.

—and he did take care of the notes that he agreed to; at least I never heard anything of them afterwards, this Wetherell note being the note that he agreed to take care of; said he could make a settlement with them; he would take care of it so it should not

trouble me, and I agreed to take care of what was known as the Abbott notes, and the amount of money that I paid under the agreement——

Objected to.

—was the amount I have stated in my cross-examination.

Q. That was the $3,600 and the other amounts?

A. Those various items.

Q. Have you been entirely relieved from that liability, or is the claim existing against you still on account of it?

A. The Wetherell note?

Q. That which you assumed on your contract with Newell?

A. There is a suit still pending against me in connection with that Abbott matter.

Q. Pending where?

A. Pending here.

Q. Has it been tried and submitted to the court?

A. It has.

Q. How much is the claim in that case?

Objected to.

A. His claim was $1,800.

Q. That, as I understand, was an arrangement made between you and Newell by which Newell agreed——

Objected to.

255 —to assume this Wetherell indebtedness—the indebtedness mentioned in the Follansbee trust deed, and you agreed to assume what you call the Abbott indebtedness?

Objected to, as this agreement has been stated to be in writing.

Q. Mr. Brown, was that agreement reduced to writing at the time you originally made it.

A. Oh, no; several years afterwards.

Q. Have you that writing?

A. I have.

Q. Got it here?

A. I have.

Q. Will you produce it?

(Paper produced.)

Q. When was the original agreement made?

A. It was not in writing, I think, in 1878.

Q. When was the writing made?

A. I don't remember; the 19th day of June, 1884.

Q. That is the writing that you refer to, is it?

A. Yes.

Mr. OSBORNE: I offer that in evidence, marked "Defendants' Exhibit 15," a copy of which is attached hereto.

Mr. BURRY: I object to the introduction of the paper, first, be-

cause the execution of it is not proved; and, second, because it is incompetent.

Q. You are familiar with your own signature?
A. I am.
Q. You are acquainted with the signature of Kirk B. Newell?
A. Yes.
Q. Will you state whether that is your signature and that of Kirk B. Newell?
A. The first signature is mine and the second signature is that of Kirk B. Newell; it was signed in my presence.
Q. When did you pay that thirty-six hundred and odd dollars?
A. The 14th day of June, 1884.

Mr. BURRY: I would like to have it understood there is an
256 objection to all this without objecting separately.

Q. What did you pay it in?
A. Cash.
Q. Mr. Brown, in stating the amounts in the judgment against Mr. Meserve in Boston, I see by the record that there was included in that suit a note by you payable to Kantzler and Klein, $374, drawing 10 per cent. interest, the principal having been paid April 1, 1875; was that, as you understand it, included in the judgment?
A. That was included in the judgment.
Q. In addition to those which you have recited?
A. In addition.

Mr. OSBORNE: I will offer that record of the judgment in evidence to show the amounts of the several indebtedness and the computation of interest thereon.
Marked Exhibit 16, and attached hereto.

Q. You spoke of two interest coupons which were included in the Boston judgment for $250 each?
A. I did.
Q. I think you said on the direct examination that you had not the coupons themselves?
A. I have not; they were sent to Boston, and I suppose they were filed in the proceedings there.
Q. Have you a substantial copy of these coupons?
A. I have.
Q. Do you remember that?
A. I do.
Q. Will you state what was the form of those coupons?
—. "Chicago, Illinois, April 17, 1874.—On the 17th day of April, 187–, I promise to pay to the order of Henry A. Piersons $250 at the Charter Oak National bank, Hartford, Connecticut, being the annual interest due on my principal note of $2,500 of even date herewith. Those note- bears interest at 10 per cent. after due."
257 Q. Those were signed by whom?
A. Signed by me.

Recross-examination:

Mr. BURRY: Those are the coupons from what?

A. From the D. K. Pierson mortgage, or as what we have known as the D. K. Pierson mortgage in this testimony, of $2,500.

Q. In Defendants' Exhibit 15 it is recited "that judgment was obtained against you as endorser for Kirk B. Newell;" when were the notes made which you endorsed?

A. I do not remember.

Q. Will you ascertain and give it to the reporter?

A. I will.

Q. What is the title of the case in which that judgment was entered?

A. I think it is Abbott against Brown.

Q. In what court?

A. That I do not remember.

Mr. OSBORNE: It was in the circuit court of Cook county, before Judge Rogers during his lifetime; I can't say when it was. It was appealed to the appellate court and there affirmed, and appealed to the supreme court and there affirmed.

Mr. BURRY: When was the judgment entered?

A. The 21st of March, 1883.

Q. Where does Kirk B. Newell live?

A. I do not know, but the last I knew of him he lived in New York.

Q. New York city?

A. New York city.

Q. What is his business?

A. I think he had some interest in a mill.

Q. What kind of a mill?

A. It was a grain mill of some kind.

Q. When did you last know of him?

A. I think two years ago.

Q. When did you say this agreement was first made?

A. In 1878, I think.

Q. What time in 1878?

A. That I could not remember.

Q. Very soon after you sold this land to Mr. Meserve?

A. I think it was between one and two years.

258 Q. After?

A. Yes; that is my impression.

Q. For what were these notes given?

A. They were given for some loans made *to* him to Newell.

Q. Some time before that?

A. Yes.

Q. How long before?

A. That I don't remember, but I think a year or two.

Q. On real estate?

A. On real estate; yes.

Q. How came you to endorse them?

A. I don't know.

Q. Accommodation?
A. No; I could not say that.
Q. Why?
A. They were on some property that he owned and of which I effected a sale for him in 1877, I think, and they were extended on my endorsing them, and I was to have a certain interest in the outcome of the property.
Q. To whom was the property sold?
A. To Demond—Charles Demond.
Q. Where?
A. In Boston.
Q. Where was the property?
A. On Archer avenue, Chicago.
Q. Give the number and description?
A. I don't remember.
Q. Whereabouts was it situated?
A. I think west of Stewart avenue—some little distance west.
Q. What is his first name?
A. Charles Demond.
Q. And he lives where?
A. In Boston.
Q. Can you give his address?
A. I cannot; I have not seen him for eight or nine years.
Q. Do you know whether he is still living in Boston?
A. I do not.
Q. If the property was sold to Demond, how were you to have an interest in the outcome of the property?
A. In the profit that was realized in the sale.
Q. To Demond?
A. To Demond.
Q. It was these notes that you paid?
A. Yes, sir.
Q. What was the full amount of the note?
A. $2,000.
259 Q. You paid it all?
A. I paid the whole $2,000 and the interest and costs, amounting to $3,613.12.
Q. Didn't Newell pay his part?
A. Well, our agreement was he was to take care of his Wetherell notes.
Q. Never mind that.
A. He paid none of this. I paid this entirely in cash; all of it.
Q. Was he sued?
A. By whom?
Q. On those notes?
A. That I do not know. I live here and they brought suit against me here. He was in New York. I don't know whether he was ever sued or not.
Q. What has become of Wetherell?
A. I never knew him.
Q. Do you know where Rebecca Miner lives?

A. I do not. I never saw her that I know of.
Q. Who represented here?
A. That I do not know.
Q. In your transactions with her?
A. I never had any that I know of.
Q. These notes were given to her, were they not?
A. These were Newell's notes, but not mine.
Q. You never saw her?
A. I do not know that I ever saw her.
Q. Ever see any person representing her?
A. I do not remember.
Q. Is she a resident or non-resident?
A. I am unable to say, as I do not know that I ever saw the person.
Q. Is she a relative of Newell's?
A. That I do not know.
Q. Where did you first make this agreement with Newell?
A. I do not know. I think it was at Chicago.
Q. Where in Chicago?
A. Well, that I am unable to recall.
Q. You mean as to the exact place?
A. Yes.
Q. With whom did you make it, himself directly?
A. With him.
260 Q. In what year?
A. I think it was in 1878.
Q. Who were present?
A. That I do not know. I do not know that any one was present.
Q. How frequently did you talk of it after that before it was reduced to writing?
A. I do not remember that.
Q. Did you ever speak to him about it?
A. Oh, yes.
Q. Where?
A. He was in New York. I think that was where I used to see him.
Q. Where?
A. Well, I have seen him sometimes at the Windsor hotel and sometimes at some office on Broad St. I do not remember the number, and I remember of seeing him sometimes on the Produce Exchange.
Q. Are those the places where you spoke to him about it?
A. No; it was here.
Q. You never spoke to him about it in New York?
A. That was my business with him, in reference to these matters.
Q. To make this agreement?
A. No; the agreement was made here in 1878. He came out here in the year 1878, and these matters were up and we made this agreement here at that time, then they went on.
Q. Did you make any memorandum of it at that time?

A. I don't know that I did.
Q. Did he?
A. That I don't know, as the matters went on.
Q. What was he doing here at that time?
A. That I am unable to say. The only thing that I know of his doing here, as far as my information goes, was in reference to these mortgages, which had defaulted and which were being pressed for payment.
Q. Was he a man of means?
(Objected to.)
261 A. That I do not know.
Q. Was he a young man?
A. Yes; I should think he was thirty-five to forty.
Q. Did you ever know of his having any means?
A. I have a general knowledge of his owning considerable property here; I don't know to what extent.
Q. How long did you know him here?
A. I think two or three years.
Q. In what business was he engaged?
A. Real estate.
Q. Did he have money when he came here, so far as you know?
A. That I do not know.
Q. Did he have any when he left here?
A. That I do not know.
Q. Do you know when he lived here?
A. I do not, but I think he lived here in—it is my impression somewhere in—1877.
Q. Do you know where Wetherell was at that time?
A. I don't know that I ever knew where he was, or knew him, or saw him. I don't remember now that I ever did, it is possible that I may have, but, if so, I do not recall it.
Q. Don't you know that Rebecca Miner at the time of making that incumbrance was the owner of those notes and has always continued to be the owner of the notes?
A. All I know of them is what is recited in the papers. I think my deed recites the fact.
Q. Don't you know that she always continued to be the owner of those notes?
A. I have no knowledge of those notes in any way, the papers recite Rebecca Miner, and that is all the knowledge I have as she is recited in the papers.
Q. Do you know how the notes happened to be given to Rebecca Miner?
A. I suppose for purchase; that is what I always supposed.
262 JOHN B. BROWN.

Subscribed and sworn to before me this 21st day of March, A. D. 1888.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

EXHIBIT I.

"BOSTON, 13 EXCHANGE ST., *Oct.* —, 1879.

J. B. Brown, Esq., care Henry Crawford, Esq., Wabash railway, Chicago.

MY DEAR SIR: Policy 105,728 Quincy Mut. Fire Ins. Co., $2,500 on store 226–8 Purchase St. expired October 13 instant, and the insurance has been renewed for 3 yrs. The new policy issuing to the Episcopal city mission as mortgagee in possession.

On the expired policy there is $7.50 return premium is applied towards the paym't of premium on the new policy, but to make it available for this purpose the Ins. Co. require a receipt for the am't, to be signed by the assured.

I enclose such receipt herewith and will thank you to sign and return the same to me and oblige.

Very truly yours, JNO. S. BLATCHFORD,
Treasur-."

263 EXHIBIT 2.

BOSTON, 13 EXCHANGE ST., *Oct.* 30, 1889.

J. B. Brown, Esq., 125 Dearborn St., Chicago.

MY DEAR SIR: I beg to acknowledge receipt of your fav. of 18 inst. inclosing signed receipt for am't return premium of policy of Quincy Mutual Ins. Co., for which I thank you. Mr. Paine handed me your letter to him of Oct. 16, requesting that the unpaid coupons of the two "Seven Hickory" bonds which we hold be forwarded to you for use in connection with a suit to obtain judgment upon same. I was in Chicago a few days since and called upon you, hoping to have the pleasure of seeing you, but you were reported as in New York.

I send you inclosed the coupons as desired with a receipt therefor, which I will thank you to sign and return to me.

In reply to your inquiry as to how matters stand between the Episcopal city mission and yourself, I would say that we are simply mortgagees in possession. The stores are pretty well rented and we receive the rents.

Very truly yours, JNO. S. BLATCHFORD, *Treas'r.*

EXHIBIT 3.

BOSTON, *July* 13, 1880.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: In reply to your fav. of 9 inst., I beg to say that the Purchase St. stores are now paying in rentals about 4½ % upon the am't of the mortgages.

Very truly yours, JNO. S. BLATCHFORD.

264 EXHIBIT 4.

CHICAGO, *July* 9, 1880.

J. S. Blatchford, Esq., Boston, Mass.

DEAR SIR: Will you kindly inform me how the Purchase St. stores that Meserve formerly owned are taking care of themselves. I regret that I was not in when you called upon me in Chicago. I intended to have called upon you in Boston about ten days since, but was obliged to forego it for want of time.

Yours truly, J. B. BROWN.

EXHIBIT 5.

CHICAGO, *Feb.* 3*rd*, 1881.

John S. Blatchford, Esq., 13 Exchange St., Boston, Mass.

DEAR SIR: I beg to acknowledge receipt of your favor of the 31st inst. in reference to Seven Hickory bonds. The coupons received from you were included in the suit. Judgment has been taken on the same and the case was then appealed to the United States Supreme Court, and the arguments have been lately submitted.

In this connection, I would like to ask you, how you understand the matter of ownership and interest in those stores now to be. Are these stores yours and mine? I have heard nothing from you in regard to the matter for a great while. While I have no very special desire in regard to it, I deem it right that our relations to that property should be clearly understood as this is a business transaction.

Yours very truly,

(Signed) J. B. BROWN.

265 EXHIBIT 6.

BOSTON, *Feb.* 8, 1881.

J. B. Brown, Esq., 125 Dearborn St., Chicago.

DEAR SIR: I beg to acknowledge receipt of your favor of 3 inst. You do not answer my inquiry as to the value, present or prospective of the "Seven Hickory" bonds. As I wrote you on the 31 inst. we are offered 490 for each $1,000 bond but whether it is wise to accept this offer or not we do not know. What is your opinion or advise? In reply to your inquiry as to the present status of the Purchase St. estates I would reply that the "Episcopal city mission" is now the mortgagee in possession. If you wish to recover possession and are prepared to pay all arrearages, there will be no difficulty so far as the "Epis. city mission" is concerned.

Very truly yours, JNO. S. BLATCHFORD, *Treas'r.*

I hope that you may be able to inform me as to value of the bonds referred to.

EXHIBIT 7.

CHICAGO, *March* 18, 1881.

John S. Blatchford, Esq., treas'r, Boston, Mass.

DEAR SIR: I have your favor of the 16th, and note your intimation that you think it best to hold the bonds for a few months longer until some final disposition of the Purchase St. estates may be made. I wrote to you some weeks ago asking you how the account *not* stands in reference to the Purchase St. stores. What is your desire to have done about them? I have had nothing from you in reply and should be pleased to learn the situation of affairs, also what your inclination is?

Respectfully, J. B. BROWN.

266 EXHIBIT 8.

BOSTON, *March* 21, 1881.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: In reply to your favor of 18 inst. I beg to say that the "Episcopal city mission" are mortgagees in possession with reference to the Purchase St. estates.

We have held the property, deriving from it what we could in the way of rents, until such time as we may be able to realize from its sale the value of the mortgages with any arrearages of interest. This we hope to be able to do this spring.

The appreciation in the value of real estate in this city has been considerable during the past year, and it is still going on. If you find it convenient, by any arrangement you may be able to make, to become the owner of the three estates, at a price which will yield us the value of the mortgages—$19,500 each—with any arrears of interest, it will be entirely satisfactory to us, and in this case I will be happy to make up the acc't of arrears of interest, and send it to you.

Very truly yours, JNO. S. BLATCHFORD, *Treas'r.*

The mortgages are dated March, 1877, 3 years 6½ % interest.

267 EXHIBIT 9.

BOSTON, *June* 11, 1883.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: The "Episcopal city mission" the mortgagees in possession, feel that the time has now come for an adjustment of its interest in the three Purchase St. estates in this city. The carrying out of certain plans of work, already decided upon, requires such adjustment. A forced sale of the estates at auction in foreclosure of the mortgages, would probably not realize their full value, and might be prejudicial to your interests.

I beg, therefore, to enquire whether you cannot take immediate action that will be for the advantage of both the "Episcopal city mission," and yourself.

I am, dear sir, very truly yours,

JNO. S. BLATCHFORD, *Treas'r.*

EXHIBIT 10.

JUNE 13TH, 1883.

John S. Blatchford, Esq., tr., Boston, Mass.

DEAR SIR: I have your favor of the 11th and note contents. Will you be good enough to write me the situation of affairs, what you desire to have done, and any plans you have in your mind that you think would be helpful.

Yours truly,

(Signed) J. B. BROWN.

268 EXHIBIT 11.

TAMWORTH IRON WORKS, N. H., *July* 25, 1883.

John B. Brown, Esq., Chicago.

MY DEAR SIR: I duly received your favor of 13 of June, in reply to mine of the 11:—

I have given some consideration to the matter of the Purchase St. mortgages. The interest involved is a mutually important one. The mortgages represent certain trusts held by the "Episcopal city mission," and the time has now come when we must realize upon them and put the proceeds into such permanent form as will carry out the requirements of the trust.

Your own interest in the matter seems to me worth careful consideration, and it therefore has occurred to me to enquire whether you may not find it convenient to meet me in Boston at an early day, and thus secure the opportunity for a conference upon the subject which would probably be more satisfactory in all ways than correspondence.

I am now at my summer home at the mts. but I will meet you in Boston at any time upon short notice—say two or three days.

I shall be very glad of an early reply, for early action on our part is called for.

——— ———.

269 EXHIBIT 12.

CHICAGO, *July 30th,* 1883.

John S. Blatchford, Esq., tr. Tamworth iron works, N. H.

DEAR SIR: I find your favor of the 25th on my return from the East, where I have been for several weeks.

I had been expecting to hear from you in reply to mine of the

13th June, and had you written a little earlier, I could have arranged to have gone to Boston to meet you as proposed. I do not know the situation of affairs as I have had no knowledge of the property since you took possession of it. I put a considerable amount of money into this property and entered into quite a number of agreements with Mr. Meserve in regard to the exchange of certain properties, and put a certain amount of money in his hands, and entered into certain obligations with him conditioned upon our mutually taking care of the interest on the properties exchanged. I am sorry to say, that from the first, Mr. Meserve failed to carry out his part of the contract although I continued to pay money on his mortgages for quite a length of time. I understand that he has been, and may still be, in confinement for certain irregularities. I have a very large claim against him, and some judgments, but presume that I can collect little or nothing, from what I hear of him. In regard to the Purchase St. property as you know the whole situation, also what you desire to accomplish, will you kindly write me, as it will not be convenient for me to go East, having just returned after a considerable absence, and I will give the matter immediate attention, I will be glad to join with you in anything that will be mutually advantageous.

Yours very truly,

(Signed) J. B. BROWN.

270 EXHIBIT 13.

CHICAGO, *Sept.* 17*th*, 1883.

John S. Blatchford, Esq., tr., Boston, Mass.

DEAR SIR: Some days ago, I was in Boston to see a gentleman who had gone on from New York, and called at your office, thinking I might find you, but learned that you were not in town but expected within a day or two.

I requested the gentleman whom I saw at the office to inform you that I had called, and requested you to write me in answer to my letter of July 30th.

If you have formulated any plans in your mind, or anything has developed in regard to that property if you will be good enough to write me I will gladly take up the matter with you.

Yours truly,

(Signed) J. B. BROWN.

271 EXHIBIT 14.

BOSTON, *Oct.* 22, 1883.

J. B. Brown, Esq., Chicago.

MY DEAR SIR: I regret that I was not fortunate in seeing you when you were in Boston, last month. With regard to the Purchase St. estates we simply desire a settlement of the whole matter

in order that we may proceed to carry out certain plans which involve the use of the values of these estates.

Why cannot you come on at once and settle up the whole matter? Otherwise, we must sell the estates, and a forced sale is likely to be a disadvantageous sale as you know.

I will be glad to hear from you now at your early convenience and will be especially glad if we may see you here at an early day.

Very truly yours, JNO. S. BLATCHFORD, *Tre'str.*

You may expect to find me in Boston now at any time if I am not here I will be within a few hours call.

272 EXHIBIT 15.

CHICAGO, *October 25th*, 1883.

J. S. Blatchford, Esq., Boston, Mass.

DEAR SIR: I have your favor of the 22nd and note that you desire a settlement of the whole matter, in order to carry out certain plans you have in view.

Of course, I do not know the situation of affairs, or what you wish to accomplish, but as the property has been in your hands for several years, it would be necessary for me to know something of the condition of accounts if you wish me to take hold of it, and in connection with that I should like also to know what could probably be done by selling the property, or what could be realized from it in rentals.

If you will kindly send me the accounts, I will at once give attention to the matter.

Very truly,

(Signed) J. B. BROWN.

273 EXHIBIT 16.

BOSTON, *Octo.* 29, 1883.

John B. Brown, Esq., Chicago.

MY DEAR SIR: I beg to acknowledge receipt of your favor of 25 inst. I will, in accordance with your request, have the acc't of the Purchase St. estates made up and forward- to you as soon as it can be completed. The estates are now yielding annual rental of $3,600.

Very truly yours, JNO. S. BLATCHFORD, *Tre'st'r.*

EXHIBIT 17.

BOSTON, *Dec.* 17, 1883.

J. B. Brown, Esq., Chicago.

DEAR SIR: I beg to enclose herewith the acc. of the Episcopal city mission with the Purchase St. estates, with interest acc. made

up to Sept. 1, '83. The Episcopal city mission at a recent meeting of its executive board passed the following vote. "That the treasurer be directed to make demand for the immediate payment in full of our claim upon the three notes including principal and interest and all arrears secured by mortgage upon the three estates on Purchase St. in Boston." In accordance with the instructions of this vote I send you the accompanying acct., and invite your immediate attention to the matter.

I am, dear sir, very truly yours,

(Signed) JNO. S. BLATCHFORD, *Tre's'r.*

		Debits.	Dr. am'ts.	Credits.	Cr. am'ts.	Balances due for each year.	Interest from Sept. 1 of each year to Sept. 1, '83.	
1877.								
Sept. 1	Int. on mtge. note, lot 2, 6 mos., 6½ %	633 75						
1	" " " 3, 6 " "	633 75						
1	" " " 4, 6 " "	633 75						
1878.			1,901 25			1,901 25	6 yrs., 36 %.	684 45
March & Sept. 1	" " " 2, 1 yr., 6½ %	1,267 50						
" 1	" " " 3, " "	1,267 50						
" 1	" " " 4, " "	1,267 50						
July 26	Commissions to Thayer, collecting rent	57 50						
Oct. 14	Do.	32 99						
16	Repairs, 1877	1,040 85						
Nov. 8	Com., coll. rent, 16.60; repairs, 20.14	36 30						
			4,970 14					
July 26	Rents			429 99				
Oct. 14	"			639 99				
Nov. 8	"			323 33				
1879.					1,393 31	3,576 83	5 yrs., 30 %.	1,073 05
Jan. 8	Commission, collecting rents	19 33						
8	Repairs	19 62						
March & Sept. 1	Int. on mtg. note, lot 2, 1 yr., 6½ %	1,267 50						
1	" " " 3, " "	1,267 50						
1	" " " 4, " "	1,267 50						
April 4	Comm., coll. rent, 34.99; rep., 24.40	59 39						
July 3	Com., coll. rent 54 99 / Repairs 335 80	389 79						
Aug. 2	Taxes, 1878	695 96						
Oct. 8	Comm., coll. rent	33 12						
16	Insurance	25 00						

Nov. 28	Taxes, 1879	640 35						
			5,685 06					
Jan'y 8	Rents			386 66				
Ap'l 4	"			699 96				
July 3	"			1,099 96				
Oct. 8	"			662 46				
1880.					2,849 14	2,835 92	4 yrs., 24 %.	680 62
Jan'y 2	Commissions, coll. rent	35 20						
15	Insurance	25 00						
Feb'y 5	"	25 00						
March & Sept. 1	Interest on mtg. note, lot 2, 1 yr., 6½ %	1,267 50						
" 1	" " " 3, " "	1,267 50						
" 1	" " " 4, " "	1,267 50						
April 3	Com., collecting rent 42 48							
	Repairs 20 14	62 62						
April 5	Insurance	42 00						
June 16	"	21 00						
July 2	Commissions, coll. rent	42 48						
Oct. 1	Do.	42 48						
Oct. 31	Taxes, 1880	821 78						
			4,920 06					
Jan. 2	Rents			704 13				
Apr. 3	"			849 99				
July 2	"			849 99				
Oct. 1	"			849 99				
1881.					3,254 10	1,665 96	3 yrs., 18 %.	299 87
Jan. 1	Commissions, coll. rent 42 49							
	Repairs 1 50	43 99						
March & Sept. 1	Int. on mtge. note, lot 2, 1 yr., 6½ %	1,267 50						
1	" " " 3, " "	1,267 50						
1	" " " 4, " "	1,267 50						
April 1	Com., collecting rent	42 48						
July 1	" " "	43 53						
Oct. 4	" " "	45 00						
	Amounts forwarded	3,977 50				9,979 96		2,737 99

Exhibit 10—Continued.

		Debits.	Dr. am'ts.	Credits.	Cr. am'ts.	Balances due for each year.	Interest from Sept. 1 of each year to Sept. 1, '83.	
1881.	Amounts bro't forward	3,977 50				9,979 96		2,737 99
Oct. 4	Repairs	132 27						
Nov. 14	Taxes, 1881	752 22						
			4,861 99					
Jan. 1	Rents			849 99				
Apr. 1	"			849 99				
July 1	"			870 83				
Oct. 4	"			900 00				
1882.					3,470 81	1,391 18	2 yrs., 12 %.	166 94
Jan. 6	Commissions, collect. rents 45 00							
	Repairs 75 00							
		120 00						
March & Sept. 1	Int. on mtg. note, lot 2, 1 yr., 6½ %	1,267 50						
1	" " " 3, " "	1,267 50						
1	" " " 4, " "	1,267 50						
Apr. 1	Commissions, collecting rents 45 00							
	Repairs 11 55							
		56 55						
July 1	Commissions " " 45 00							
	Repairs 22 05							
		67 05						
Oct. 2	Commissions " " 45 00							
	Repairs 75							
		45 75						
24	Insurance	25 00						
Nov. 1	Taxes, 1882	815 40						
			4,932 25					
Jan'y 2	Rents			900 00				
Apr. 1	"			900 00				

July 1	"				900 00				
Oct. 2	"				900 00				
1883.						3,600 00	1,332 25	1 yr., 6 %	79 94
Jan'y 2	Commissions for coll. rents	45 00							
	Repairs	22 14							
			67 14						
22	Insurance		25 00						
March & Sept. 1	Int. on mtge. note, lot 2, 1 yr., 6½ %		1,267 50						
" 1	" " " 3, " "		1,267 50						
" 1	" " " 4, " "		1,267 50						
May 13	Insurance		25 00						
29	"		42 00						
Ap'l 2	Commissions, coll. rent	45 00							
	Repairs	7 78							
			52 78						
June 30	Insurance		21 00						
July 2	Com. for coll. rent	45 00							
	Repairs	102 98							
			147 98						
Oct. 1	Commissions for coll. rent		42 50						
				4,225 90					
Jan'y 2	Rents				900 00				
Apr. 2	"				900 00				
July 2	"				900 00				
Oct. 1	"				808 50				
						3,508 50	717 40		
	Total balance		13,420 79				13,420 79		
	Total interest on bal		2,984 87						2,984 87
	Principle of mtge. note, lot 2, date Mar. 1, '77		19,500 00						
	" " " 3, " "		19,500 00						
	" " " 4, " "		19,500 00						
	Total amount due, with interest computed to Sept. 1st, 1883		74,905 66						

276 EXHIBIT 18.

CHICAGO, *December* 22*nd*, 1883.

John S. Blatchford, Esq., tr., Boston, Mass.

DEAR SIR: I beg to acknowledge receipt of your favor of the 19th enclosing account with the Purchase-street stores, and resolution passed by your board.

I do not know that I understand what is desired in regard to this property, and therefore ask whether the resolution directing demand to be made for the payment of these notes is sent me because I have a residuary interest in that property and therefore it is for my interest to protect the same, or whether the demand is made on the assumption that I am legally bound on the notes.

I should be glad to hear from you also what your views are, as to the value of the property, and what you think it is reasonable to expect in the future in regard to it.

Very truly,
(Signed) J. B. BROWN.

277 EXHIBIT 19.

BOSTON, *Dec.* 28, 1883.

J. B. Brown, Esq., Chicago.

DEAR SIR: I beg to acknowledge receipt of your favor of 22nd Dec., and in reply would say, that the Episcopal city mission hold you legally liable for the am't, of the notes and interest in accordance with the acc't, rendered, inasmuch as you expressly assumed the note and interest upon No. 226–'8 Purchase St. and gave your bond to protect against the notes and interest upon Nos. 218–'20 and 222–'24 which were expressly assumed by Mrs. Brown.

The Episcopal city mission find it necessary now to make these resources available in carrying out certain plans connected with its work, and an early adjustment of the matter is very important to us.

Very truly yours,
(Signed) JNO. S. BLATCHFORD, *Tre'st'r.*

EXHIBIT 20.

CHICAGO, *January* 10*th*, 1884.

John S. Blatchford, Esq., tr., Boston, Mass.

DEAR SIR: I have been duly considering your favor of the 28th ulto. I do not understand how you hold me liable to you in regard to the notes and interest on the Purchase-street stores, as long as the notes were given by Meserve, and my agreement covering the assumption of their payment, and bond given in that connection, were a part of the agreement made with Meserve at the time of purchase.

Very truly,
(Signed) J. B. BROWN.

278 EXHIBIT 21.

Francis V. Balch, Charles S. Rackemann, counsellors-at-law, 39 Court St., Boston, Mass.

JAN'Y 21, 1883.

J. B. Brown, Esq.

DEAR SIR: The Episcopal city mission has placed in my hands the matter of its mortgages on Purchase street as to which its treasurer, Mr. Blatchford, has been in correspondence with you.

We propose forthwith to foreclose the mortgages by sale under the power, but this will involve, in the present state of the market an almost certain loss of large amount.

For any difference between amounts due us, and amounts realized we shall, of course, look to you. If you have counsel I can easily satisfy him of your responsibility in the matter.

If you will yourself take charge of the real estate and pay us up, you very likely could escape loss, and we hope that you will see your interest in such course.

You ask us the present value of the estates, they were assessed for taxation in 1883 at $72,000 but at forced sale, as you must be well aware, large loss is inevitable.

Your ob't servant,

(Signed) F. V. BALCH.

279 *Offsets in Episcopal City Mission Case.*

	Prin.	Int. to Feb. 20th, 1888.	Total.
Warranty deed, J. B. Brown & wife to Geo. W. Meserve, conveyed lots 15 to 24, incl., in block 1, Wright & Wendett's sub'n, in N. W. ¼ S. E. ¼, 9, 38, 14, subject to trust deed to Peter Schleuter, trustee, dated Apr. 1st, 1875, securing 8 notes of J. B. Brown of even date, as follows:		10 per cent.	
Peter Schleuter	$557 92	$719 08	$1,277 00
Ed. Eichoff	357 05	460 20	817 25
Wm. Hickler	119 27	153 72	272 99
Chas. Miller	940 11	1,211 69	2,151 80
The other four notes were entered in suit in Boston and judgment entered.		6 per cent.	
Judgment, June 25th, 1879	2,606 61	1,353 26	3,959 89
Trust deed to G. A. Follansbee, dated July 26th, 1876, to secure notes of J. B. Brown for 3,060.		8 per cent.	
Amount of principal yet unpaid	390 00	360 88	750 83
Cooper, Packard & Gurley, July 14, 1879, fees in Meserve, Eichoff, & Klein cases	165 00	85 14	250 14
			$9,479 95

280 Whereas heretofore on the 16th day of May, 1876, Kirk B. Newell conveyed to John B. Brown the following-described real estate: The south thirteen and seventy-six hundredths (13.76) acres of a certain lot and parcel of land, being a part of the west one-half (½) of the southeast one-quarter (¼) of section thirty-five (35), township forty-one (41) north, range twelve (12) east, of the third (3rd) principal meridian, bounded as follows, to wit: Commencing at a point on the north line of said west one-half (½) distant fifty (50) links west from the northeast corner, running thence south parallel with the east line seventeen (17) chains thirty-two (32) links to the northwest corner thereof, thence east nineteen (19) chains fifty (50) links to the place of beginning, containing thirteen and seventy-six hundredths (13.76) acres, more or less, the above-described thirteen and seventy-six hundredths (13.76) acres being the tract of land now subdivided under the title of Newell's addition to Park Ridge, containing one hundred and two (102) lots, which subdivision is not yet shown of record, subject, however, to a deed of trust dated July twenty-sixth (26th), 1873, and recorded November twenty-eighth (28th), 1873, in Book of Records Three Hundred Thirty-four (334), page one hundred fifteen (115), given by James B. Wetherill and Kirk B. Newell to George A. Follansbee to secure their joint promissory note, payable to the order of Rebecca Minor, for thirty-two hundred (3,200) dollars, bearing date July twenty-sixth (26th), 1873, and due five years after the date thereof, which said incumbrances said Brown assumed and agreed to pay as part of the purchase price;

Ex. 15 should be 25.

And whereas on the sixth (6th) day of January, 1877, the 281 said Brown sold and conveyed to George W. Meserve, of Boston, Massachusetts, the aforesaid property, subject to the said above-described incumbrances, which the said Meserve assumed and agreed to pay as part of the purchase price;

And whereas said Meserve wholly failed to pay said incumbrances or any interest thereon or taxes and failed to keep his covenant with said Brown to do the same;

And whereas said Brown is bounden upon his covenant to the said Newell;

And whereas said Brown has been sued by Henry G. Abbott, of Utica, New York, as endorser upon a note made by Kirk B. Newell to said Abbott, upon which note judgment for the principal sum thereof, with interest hereon and costs, amounting in all to thirty-six hundred thirteen dollars twelve cents ($3,613.12), has been rendered against said Brown, which judgment has been affirmed by the supreme court and said judgment of thirty-six hundred thirteen dollars twelve cents ($3,613.12) has been paid by said Brown and discharged of record;

And whereas there are certain other claims upon said Brown for legal expenses, etc., to the extent of about eighteen hundred dollars ($1,800) in regard to said litigation: Now, therefore, it is agreed between the said John B. Brown and the said Kirk B. Newell that in consideration of the payments made by said Brown for and on

behalf of said Newell as aforesaid the said Newell agrees to release and hereby does release said Brown from any and all obligations he, the said Brown, may be under by reason of his covenant to assume and pay said incumbrances upon the above-described
282 property in "Newell's" addition to Park Ridge, and in consideration thereof the said Brown releases said Newell from all obligation to respond to the said Brown for any portion of the judgment obtained by the said Abbott against said Brown as guarantor upon the note of said Newell as aforesaid, and which said judgment said Brown has liquidated as aforesaid—

It being understood that the respective claims of each of the parties hereto against the other are hereby agreed upon and settled in the manner and upon the basis above set forth.

In witness whereof the parties have hereunto set their hands and seals this nineteenth day of June, 1884.

JOHN B. BROWN. [SEAL.]
KIRK B. NEWELL. [SEAL.]

283 I. EXHIBIT 17.

Episcopal City Mission in Acc't. with Purchase Street Estate Mortgages, Lots 2, 3, 4 on Plan of Ellis, Dated Oct. 24, 1876.

DR.				CR.			
1877.				1878.			
Mar. 1.	Mortg'e note, lot 2		19,500 00	July 26.	Rents, 372.49 & 57 50		429 99
	" " 3		19,500 00	Oct. 14.	"		639 99
	" " 4		19,500 00	Nov. 8.	"		323 33
1878.				1879.			
Mar. 1.	Int. on mortg'e note, lot 2, 1 yr., 6½ %		1,267 50	Jan'y 1.	Int. on— mo. da.		
	Int. on mortg'e note, lot 3, 1 yr., 6½ %		1,267 50		429.99 for 5 6..	11 18	
	Int. on mortg'e note, lot 4, 1 yr., 6½ %		1,267 50		" 639.99 " 2 18..	8 32	
July 26.	Com'ns to Thayer, coll'd rents, etc		57 50		" 323.33 " 1 24..	2 91	
Oct. 14.	Com'ns to Thayer, coll'd rents, etc		32 99		1,393.31		22 41
16.	Taxes of 1877		1,040 85	8.	Rents		386 66
Nov. 8.	Com'ns for coll'd rents	16 16		Ap'l 4.	"		699 96
	Repairs	20 14		July 3.	"		1,099 96
			36 30	Oct. 8.	"		662 46
1879.				1880.			
Jan'y 1.	Int. on— mos. da.			Jan'y 1.	Int. on— m. da.		
	57.50 for 5 6..	1 49			1,393.31 for 12 0..	83 60	
	" 32.99 " 2 18..	43			" 386.66 " 11 24..	12 81	
	" 1,040.85 " 2 16..	13 18			" 699.96 8 28..	31 27	
	" 36.30 " 1 24..	33			" 1,099.96 5 29..	32 81	
			15 43		" 662.46 2 24..	9 27	
8.	Comm'ns & coll. rents..	19 33					179 75
	Repairs	19 62			4,242.35		
			38 95	2.	Rents		704 13
Mar. 1.	Int. on mortg'e note, lot No. 2, 1 yr, 6½ %		1,267 50	Ap'l 3.	"		849 99
	Int. on mortg'e note, lot No. 3, 1 yr., 6½ %		1,267 50	July 2.	"		849 99
	Int. on mortg'e note, lot No. 4, 1 yr., 6½ %		1,267 50	Oct. 1.	"		849 99
Ap'l 4.	Com'ns for coll'd rents..	34 99					
	Repairs	24 40					
			59 39				
July 13.	Com'ns for coll'd rents..	54 99					
	Repairs	335 80					
			390 79				
Aug. 2.	Taxes of 1878		695 96				
Oct. 8.	Com'ns for coll'd rents		33 12				
16	Insurance		25 00				
Nov. 28.	Taxes for 1879		640 35				

Exhibit 17—Continued.

DR. CR.

1880.									
Jan'y	1.	Int. on—		mos.	da.				
		1,167.64	for	12	0..	70 06			
		" 38.95	"	12	24..	3 30			
		" 59.39		8	28..	2 65			
		" 389.79		5	29..	11 63			
		" 695.96		4	30..	17 40			
		" 33.12		2	24..	46			
		" 25.00		2	16..	32			
		" 640.35		1	4..	3 63			
							108 45		
		3,050.20							
"	2.	Com'ns for coll'd rents					35 20		
	15.	Insurance					25 00		
Feb'y	15.	"					25 00		
M'ch	1.	Int. on mortg. note, lot 2, 1 yr., 6¼ %					1,267 50		
		Int. on mortg. note, lot 3, 1 yr., 6¼ %					1,267 50		
		Int. on mortg. note, lot 3, 1 yr., 6¼ %					1,267 50		
Ap'l	3.	Com'ns for coll. rents				42 48			
		Repairs				20 14			
		Insurance				42 00			
							104 62		
June	16.	"					21		
July	2.	Com'n coll'd rents					42 48		
Oct.	1.	" " "					42 48		
	31.	Taxes of 1880					821 78		
		Carried forward					74,200 14		
284									
		Brought forward					74,200 14		
1881.									
Jan'y	1.	Int. on—		mo.	da.				
		3,050.20	for	12	0..	183 01			
		" 35.20	"	12	0..	2 11			
		" 25.00	"	11	17..	1 45			
		" 25.00	"	10	17..	1 36			
		" 104.62	"	8	29..	4 69			
		" 21.00	"	6	16..	69			
		" 42.48	"	5	30..	1 27			
		" 42.48	"	3	0..	64			
		" 821.78	"	2	1..	8 35			
							203 57		
		4,167.76							
		Com'ns coll'd rents				42 49			
		Repairs				1 50			
							43 99		
M'ch	1.	Int. on mort. note, lot 2, 1 yr., 6¼ %					1,267 50		
		Int. on mort. note, lot 3, 1 yr., 6¼ %					1,267 50		
		Int. on mort. note, lot 4, 1 yr., 6¼ %					1,267 50		
Ap'l	1.	Com'ns for coll'd rents					42 48		
July	1.	" " "					43 53		
Oct.	4.	" " "				45 00			
		Repairs				132 27			
							177 27		
Nov.	14.	Taxes, 1881					752 22		
1882.									
Jan'y	1.	Int. on—		mo.	da.				
		4,167.76	for	12	0..	250 06			
		" 43.99	"	12	0..	2 64			
		" 42.48	"	9	0..	1 91			
		" 43.53	"	6	0..	1 30			
		" 177.27	"	2	28..	2 60			
		" 752.22	"	1	18..	6 02			
							264 53		
		5,227.25							
	6.	Comm's coll'd rents				45 00			
		Repairs				75 00			
							120 00		
Mar.	1.	Int. on mort. note, lot 2, 1 yr., 6½ %					1,267 50		
		Int. on mort. note, lot 3, 1 yr., 6½ %					1,267 50		
		Int. on mort. note, lot 4, 1 yr., 6 %					1,267 50		
Ap'l	1.	Com'ns coll'd rents				45 00			
		Repairs				11 55			
							56 55		
		Carried forward							7,698 61
		Brought forward							7,698 61
1881.									
Jan'y	1.	Int. on—		mo.	da.				
		4,242.35	for	12	0..	254 54			
		" 704.13	"	12	0..	42 25			
		" 849.99		8	29..	38 11			
		" 849.99		6	0..	25 50			
		" 849.99		3	0..	12 75			
							373 15		
		7,496.45							
		Rents					849 99		
Ap'l	1.	"					849 99		
July	1.	"					870 83		
Oct.	4.	"					900 00		
1882.									
Jan'y	1.	Int. on—		mo.	da.				
		7,496.45	for	12	0..	449 79			
		849.99	"	12	0..	51 00			
		849.99	"	9	0..	38 25			
		870.83	"	6	0..	26 12			
		900.00	"	2	28..	13 20			
							578 36		
		10,967.26							
Jan'y	2.	Rent					900 00		
Ap'l	1.	"					900 00		
July	1.	"					900 00		
Oct.	2.	"					900 00		
1883.									
Jan'y	1.	Int. on—		mo.	da.				
		10,967.26	for	12	0..	658 03			
		900.00	"	12	0..	54 00			
		900.00		9	0..	40 50			
		900		6	0..	27 00			
		900		3	0..	13 50			
							793 03		
		14,567.26							

Exhibit 17—Continued.

Dr.						Cr.	
1882.							
July	1.	Com'ns coll'd rents			45 00		
		Repairs			22 05		
							67 05
Oct.	2.	Com'ns collected rents.			45 00		
		Repairs			75		
							45 75
	24.	Insurance					25 00
Nov.	1.	Taxes of 1882					815 40
1883.							
Jan'y	1.	Int. on—		mo. da.			
		5,227.25	for	12 0..	313 63		
		" 120.60	"	11 26..	7 12		
		" 56.55	"	9 0..	2 54		
		" 67.05	"	6 0..	2 01		
		" 45.75	"	3 0..	69		
		" 25.00	"	2 8..	28		
		" 815.40	"	2 0..	8 15		
							334 42
		6,357.00					
	2.	Com'ns coll. rents			45 00		
		Repairs			22 14		
							67 14
	22.	Insurance					25 00
		Carried forward					
285							
		Brought forward					84,889 04
1883.							
Mar.	1.	Int. on mort. note, lot 2, 1 yr., 6⅛ %					1,267 50
		Int. on mort. note, lot 3, 1 yr., 6⅛ %					1,267 50
		Int. on mort. note, lot 4, 1 yr., 6⅛ %					1,267 50
	13.	Insurance					25 00
	29.	"					42 00
Ap'l	2.	Comm's coll'd rents			45 00		
		Repairs			7 78		
							52 78
June	30.	Insurance					21 00
July	2.	Comm's coll'd rents			45 00		
		Repairs			102 98		
							147 98
Oct.	1.	Comm's coll'd rents					42 50
1884.							
Jan.	1.	Int. on—		mos. da.			
		6,357.00	for	12 0..	424 40		
		" 67 14	"	12 0..	4 16		
		" 25.00		11 9..	1 52		
		" 25.00		9 18..	1 28		
		" 42.00		9 3..	2 06		
		" 52.78		8 29..	2 57		
		" 21.00		6 1..	68		
		" 147.98		5 29..	4 78		
		" 42.50		3 0..	69		
							442 54
		6,780.40					
Jan'y	2.	Comm's coll'd rents & rep'rs					300 01
Mar.	1.	⅔ comm's coll'd rents & rep'rs, 58.60					39 06
		Legal expenses foreclosing mort'ge					228 00
		Taxes of 1883					783 00
		Interest & costs					24 76
		Int. on—		mo. da.			
		6,780.40	for	3 0..	110 18		
		" 300.01	"	3 0..	4 87		
							115 05
							90,955 22
March	1.	Balance due from Purchase-street estate mortgages to Episcopal city mission					2,284 10
		Carried forward					16,513 96
		Brought forward					16,513 96
1883.							
Jan.	2.	Rents					900 00
Apr.	2.	"					900 00
July	2.	"					900 00
Oct.	1.	"					808 50
1884.							
Jan.	1.	Int. on—		mo. da.			
		14,567.26	for	12 0..	946 87		
		" 900.00	"	11 29..	58 26		
		" 900.00		8 29..	43 60		
		" 900.00		5 29..	28 99		
		" 808.50		3 0..	13 14		
							1,090 86
		18,075.76					
	2.	Rent to 1st inst					900 00
M'ch	1.	⅔ qu'r's rent to date					600 00
		Int. on—		mo. da.			
		18,075.76	for	3 0..	293 73		
		" 900.00	"	3 0..	14 62		
							308 35
"	1.	On ac. State of 2 $1,000 Hickory bonds in two judgments given in 1877, as security for interest on mortg's (no assets on them until July, 1884) at 66⅔ %, face value					576 12
"	1.	On ac. sale on 2 $1,000 Hickory bonds as above					1,633 33
"	1.	Proceeds sale lot No. 2					14,500 00
		" " " No. 3					14,000 00
		" " " No. 4					14,500 00
		Bal. due to Epis. city mission					22,824 10
							90,955 22

286 EXHIBIT 18.

Episcopal city mission.

Memo. of Receipts & Expenditures for Acc't of the Three Purchase St. Estate from March, 1884, to March, 1886.

Receipts from rents:

1884, April	4.	One month's rent		300	
" July	2.	Three mo's' rent		900	
" Oct.	1.	Do.		900	
1885, Jan'y	5.	Do.		900	
" Apr.	1.	Do.		900	
" July	2.	Do.		750	
" Oct.	6.	Do.		922	92
1886, Jan'y	2.	Do.		949	98
" M'ch	16.	Do.		583	32
					7,106 22

Expenditure:

1884, Apr.	4.	Collection of rents & repairs ⅓ of 58.60	19	53	
" July	2.	" "	340	36	
" Oct.	1.	" "	63	83	
1885, Jan.	5.	" "	55	95	
" Apr.	1.	" "	88	44	
" June	19.	Taxes, 1884	959		
" July	2.	Collection of rents & repairs	42	71	
" "	17.	Insurance	40		
" Oct.	6.	Collection of rents & repairs	50	14	
" "	14.	Insurance	15		
1886, Jan.	2.	Collection of rents & repairs	159	76	
" "	4.	Insurance, net	15		
" "	14.	Advertising	7	80	
" Feb'y	18.	Insurance, net	5	00	
" "	26.	Taxes, 1885	705	70	
" M'ch	16.	Collection of rents & repairs	168	42	
" "	9.	Commissions on sales	510		
" "	19.	Professional services	60		
					3,306 22
					$3,800

287 COMMONWEALTH OF MASSACHUSETTS:

[SEAL.] I, Lincoln Flagg Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk and hath the keeping of the files, records, and proceedings of said court within and for said county; also of the late court of common pleas within and for said county, and of the late superior court of the county of Suffolk aforesaid; that he is by law the proper person to make out and to verify copies of the files, records, and proceedings of said several courts; that full faith and credit are and ought to be given to his acts and attestations done aforesaid, and that his attestation to the papers hereunto annexed, being numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, & 13 of the files, records, and proceedings of the said superior court, is in due form.

In testimony whereof I have hereunto set my hand and caused

the seal of said court to be hereunto affixed this twenty-second day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

288 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for said county of Suffolk it is thus contained, the following being the entire record in the case:

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To the sheriff of our several counties or their deputies, Greeting:

[L. S.] We command you to attach the goods or estate of George W. Meserve, of Boston, in county of Suffolk, to the value of five thousand dollars, and for want thereof to take the body of the said Meserve (if he may be found in your precinct) and him safely keep, so that you have him before our justices of our superior court, next to be holden at Boston, within and for our said county of Suffolk, on the first Tuesday of January next, then and there in our said court to answer unto John B. Brown, of said Boston, in an action of contract; and the pl'ff says that heretofore, to wit, about the first day of January, 1874, he was seized in fee of a certain tract of land in county of Cook and State of Illinois, being lots numbered fifteen to twenty-four, both inclusive, in block one, in Wright and Windett's subdivision of the northwest quarter of the southeast quarter of the southwest quarter of section nine, township thirty-eight north, range junction east of the third principal meridian; that on or about the
17th day of April, 1874, he made a certain promissory note
289 for the sum of twenty-five hundred dollars, payable to Henry A. Pearsons, with interest at ten per cent. per annum from April 18, 1875, and said interest was evidenced and made payable by certain coupon promissory notes given to said Pearsons by pl'ff; that said principal note of $2,500 is not yet due, but certain of said coupon notes, copies of which are annexed, marked A & B, are overdue; that to secure the payment of said note of $2,500 to Henry A. Pearsons and interest on same as aforesaid and said coupon notes he conveyed or or about the day of their date said lots of land to D. R. Pearsons, trustee, and the purpose and power of said trust to D. R. Pearsons was in substance to sell said property upon default in the payment of said notes and interest on same and apply the proceeds to the liquidation of said notes and indebtedness and pay the balance to said pl'ff, and said Pearsons, trustee, further became bound upon payment of said note and interest to reconvey said estates discharged of all trusts to pl'ff or his assigns, & upon said payment his interest therein terminated; and

the pl'ff further says that on or about the first day of April, 1875, he executed the promissory note annexed in copy and marked C, D, E, & F, and, to secure the same, on or about the same day conveyed said land above described to one Peter Schlenter, trustee, and the purpose and power of said trust in said deed and the rights, duties, and interest of said Schlenter in & to said land was in substance like and identical with those of said Pearsons, trustee, above mentioned.

And the pl'ff further says that on or about the sixth day of January, 1877, he conveyed said premises to defendant, subject,
290 among other things and incumbrances, to said trust deeds to Pearsons and Schlenter, and said deed to defendant contained a reservation or stipulation whereby defendant assumed and agreed to pay said notes and interest on same and to save him, said pl'ff, harmless therefrom; and pl'ff says deed to defendant was by pl'ff duly executed and acknowledged and delivered to and was accepted by defendant, and defendant entered into and upon said premises and occupied the same, and said notes secured by said trust deeds were a part of the consideration of deed to defendant and was a part of the purchase price, and defendant thereby became bound to pay said notes and discharge said trust deeds and save said pl'ff harmless from and indemnified against all loss, damage, expense, & cost for or on account of said notes; but, being wholly regardless of his duties in the premises, he has refused and neglected and still refuses and neglects to pay said notes or every or any part of these things long overdue and payable, and said pl'ff has been found to take up and pay same and has done so, and defendant owes the pl'ff the amount of said notes and money so paid out by him and interest on same.

By his att'y, A. A. RANNEY.

A.

$250. CHICAGO, ILL., *April 17th*, 1874.

On the 17th day of April, 1877, I promise to pay to the order of Henry A. Pearsons two hundred and fifty dollars at the Charter Oak National bank, Hartford, Conn., being the annual interest due on my principal note of $2,500 of even date herewith. This note bears interest at ten per cent. after due. No. —.

(Signed) JOHN. B. BROWN.

291 Endorsed: Pay Pinckney W. Ellsworth, or order, without recourse. Henry A. Pearsons.

B.

$250. CHICAGO, Ill., *April 17th*, 1874.

On the 17th day of April, 1876, I promise to pay to the order of Henry A. Pearsons two hundred and fifty dollars at the Charter Oak National bank, Hartford, Conn., being the annual interest due

on my principal note of $2,500 of even date herewith. This note bears interest at ten per cent. after due. No. —.

(Signed) JOHN B. BROWN.

Endorsed: Aug. 9, '76. Rec'd. $25. Pay Pinckney W. Ellsworth, or order, without recourse. Henry A. Pearsons.

C.

$117.05. CHICAGO, *April* 1, 1875.

One year after date I promise to pay to Messrs. Ruhe & Schopper (Keho Schaffer), or order, one hundred seventeen & $\frac{05}{100}$ dollars, at my office, 57 Dearborn street, with interest at the rate of ten per cent. per annum until paid. Value received.

(Signed) J. B. BROWN.

Endorsed: Pay John McKlein, or order. Ruhe & Schopper.

D.

$374. CHICAGO, *April* 1, 1875.

One year after date I promise to pay Messrs. Rangler — Klein, or order, three hundred seventy-four dollars, at my office, 57 Dearborn St., with interest at the rate of ten per cent. per annum until paid. Value received.

(Signed) J. B. BROWN.

Endorsed: Pay John Klein, or order. (Rangler) Kanzler & Klein.

292

E.

$230.02. CHICAGO, *April* 1, 1875.

One year after date I promise to pay to Gottlieb Klein, or order, two hundred thirty $\frac{02}{100}$ dollars, at my office, 57 Dearborn St. with interest at the rate of ten per cent. per annum until paid. Value received.

(Signed) J. B. BROWN.

Endorsed: Pay John Klein, or order. Gottlieb Klein.

F.

$770.28. CHICAGO, *April* 1, 1875.

One year after date I promise to pay to H. G. Diefenbach, or order, seven hundred seventy $\frac{28}{100}$ dollars, at my office, 57 Dearborn St., with interest at the rate of 10 per cent. per annum until paid. Value received.

(Signed) J. B. BROWN.

Endorsed: Pay John Klein, or order. H. G. Diefenbach.

To the damage of the said Brown (as he says) the sum of five thousand dollars, which shall then and there be made to appear with other due damages; and have you there this writ with your doings therein.

Witness Lincoln Flagg Brigham, Esquire, at Boston, the 17th day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

JOS. A. WILLARD, *Clerk.*

On which said writ is the following return by the officer who served the same:

SUFFOLK, *ss:*

BOSTON, *December 17th*, 1877.

By virtue of this writ I this day, at 30 minutes past four o'clock p. m., attached all the right, title, and interest the within-
293 named George W. Meserve has in and to any and all real estate in the county of Suffolk. Dec. 16, 1877, I left at the last & usual place of abode of said Meserve a summons for his appearance at court, as within directed.

JOHN B. O'BRIEN,
Dep. Sheriff.

Service & travel	1 66
Copy & recording	1 25
	$2 91

On said Tuesday of January, A. D. 1878, the plaintiff appeared and, by his attorney, A. A. Ranney, Esquire, entered the above action, and said defendant also appeared, by his attorney, and filed the following, to wit:

Superior Court, Jan'y T., 1878.

SUFFOLK, *ss:*

JOHN B. BROWN
vs.
GEO. W. MESERVE.

In the above-entitled action I appear for the defendant.

CHAS. S. LINCOLN,
Def't's Att'y.

Filed Jan. 7, 1878.

Superior Court, Jan'y T., 1878.

SUFFOLK, *ss:*

JOHN B. BROWN
vs.
GEO. W. MESERVE.

Defendant's Answer.

And now comes the defendant in the above-entitled action and for answer denies each and every allegation in plaintiff's writ and

declaration contained, and denies that he is in any way liable as alleged therein or in any form or manner whatever.

294 By his att'y: CHARLES S. LINCOLN,
P'r C.

Filed Jan. 31, 1878.

Superior Court, Jan'y Term, 1878.

SUFFOLK, *ss:*

J. B. BROWN
vs.
G. W. MESERVE.

And now comes the defendant in the above-entitled action and gives notice that he desires a trial by jury.

By his attorney: CHAS. S. LINCOLN.

Filed Jan. 31, 1878.

Also the plaintiff filed the following, to wit:

Superior Court, Jan'y Term, 1878.

SUFFOLK, *ss:*

JOHN B. BROWN
vs.
GEO. W. MESERVE.

In said cause plaintiff demands a trial by jury.

A. A. RANNEY, *Att'y.*

Filed February 7, 1878.

COMMONWEALTH OF MASSACHUSETTS.

Superior Court, Jan'y Term, 1878.

SUFFOLK, *ss:*

J. B. BROWN
vs.
GEO. W. MESERVE.

And now comes the plaintiff in the above-entitled action and on oath says that the allegations contained in the declaration filed in said action are true, and that in his behalf there is no defence to said action; wherefore he prays that an order may be entered, calling on the defendant to show cause why judgment in said action should not be given for the plaintiff.

JOHN B. BROWN.

295 STATE OF ILLINOIS, }
County of Cook, } *ss:*

FEB. 9TH, 1878.

Then personally appeared the above-named John B. Brown and made oath that the foregoing affidavit, by him subscribed, is true, before me.

GEO. MILLS ROGERS,
Notary Public.

Filed Feb. 11, 1878.

[Notarial Seal Geo. Mills Rogers, Chicago, Cook Co., Ill.]

SUFFOLK, *ss:*

Superior Court, January Term, 1878.

JOHN B. BROWN
vs.
GEO. W. MESERVE.

In above cause enter my appearance for the plaintiff.

I. R. CLARK.

Filed February 12, 1878.

And it was ordered by the court as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court, January Term, 1878, viz., February 11, 1878.

JOHN B. BROWN
vs.
GEO. W. MESERVE,

And now in the above action the plaintiff, on the eleventh day of February, 1878, having filed an affidavit verifying the cause of action and swearing in his belief there is no defense, it is ordered that the defendant forthwith appear at said court and show cause why judgment not be given for the plaintiff.

By the court:

JOS. A. WILLARD, *Clerk.*

296 And said order was returned into court with the following thereon, to wit:

SUFFOLK, *ss:*

BOSTON, *February* 11, 1878.

I this day notified the within-named George W. Meserve by delivering to Charles S. Lincoln (his attorney of record) in hand a true copy of the within order.

I. R. CLARK,
Pl'ff's Att'y.

Subscribed and sworn to before me this eleventh day of February, 1878.

A. A. RANNEY,
Jus. Peace.

Filed February 12, 1878.

And thereupon, on the sixteenth day of said February, the defendant filed the following, to wit:

SUFFOLK, *ss*:

Superior Court, Jan'y T., 1878.

JOHN B. BROWN
vs.
GEO. W. MESERVE.

Defendant's Affidavit of Defence.

And now comes the defendant in the above-entitled action and says that he has a good defence to said action and intends to bring the same to trial, and says that he was induced to purchase the real estate referred to in plaintiff's declaration by the false and fraudulent representations of the plaintiff respecting their condition and value, and that the alleged agreements of the defendant were without consideration and not binding upon the defendant; and defendant further says that he is advised and believes that the plaintiff has no cause of action.

GEO. W. MESERVE.

Subscribed and sworn to before me this sixteenth day of February, A. D. 1878.

HERBERT A. CHAPIN,
Justice of the Peace.

297 Thence the same was continued from term to term to the present April term, 1879. And now the said defendant, though called to come into court, does not appear, but makes default.

It is, therefore, considered by the court on the twenty-fifth day June, 1879, that said John B. Brown, plaintiff as aforesaid, recover of said George W. Meserve, defendant as aforesaid, the sum of two thousand five hundred and sixty-three dollars and fifty-two cents' damages, and costs of suit, taxed at forty-three dollars and nine cents.

Execution issued January 14th, 1880.

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Lincoln Flagg Brigham, Esq., chief justice of our superior court, at Boston, in said county of Suffolk, this eighteenth day of November, A. D. 1887.

[SEAL.] JOS. A. WILLARD, *Clerk.*

298 *Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Thursday, the 8th day of March, A. D.* 1888.

Present: Mr. Burry, representing the complainant; Mr. Osborne, representing the defendant.

GEORGE W. MESERVE, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. OSBORNE and deposes and says as follows:

Q. State your full name.
A. George W. Meserve.
Q. Where do you reside?
A. Boston.
Q. How long have you resided there?
A. Thirty years.
Q. Are you one of the complainants in this suit?
A. Yes, sir.
Q. Are you acquainted with the Episcopal city mission or the officers of the mission—of that corporation?
A. I know Mr. Blatchford and Mr. Paine; those two men are the only ones I know.
Q. They were connected with that corporation?
A. Yes.
Q. How long have you known them?
A. I have known Mr. Paine since 1874 and Mr. Blatchford since 1876.
Q. How long have you known Mr. Brown—John B. Brown?
A. I first met him a few days prior to the date of this contract.
Q. Your contract with him?
A. Yes.
Q. Are you acquainted with Mrs. Brown?
A. No, sir.
Q. Ever been?
A. Never saw her.
Q. Did you make some arrangement or contract with the Episcopal city mission, in relation to some of those lots mentioned in this suit, on Purchase St., Boston?
299 A. I made a contract with the Episcopal city mission for their property.
Q. When; do you remember?
A. I forget the exact date of the contract.
Q. What did you do in relation to that property?
A. I erected five new buildings.

Mr. BURRY: This testimony is objected to as incompetent.

Q. On this property?
A. On their land.
Q. And it is two of these buildings that you erected that are involved in this suit, is it?
A. Yes, sir.

Q. You executed the mortgages to the Episcopal city mission that are in evidence in this case?

A. Yes.

Q. Did you make any contract with Mr. Brown in relation to this property in these mortgages?

A. Yes, sir.

Q. Have you a copy of that contract?

A. No; I had one, sir. If it is in existence I don't know where it is.

Q. You have looked for it, have you?

A. Yes, sir.

Q. Did Mr. Brown have a duplicate copy of that contract?

A. I think he did.

Q. Now, Mr. Meserve, what was done in pursuance of that contract in connection with this property after that contract was made?

Objected to.

A. The terms of it were carried out.

Q. I ask you what was done in relation to that property after that contract was made between you and Mr. Brown or the Episcopal city mission or anybody?

Objected to as before.

A. I was to finish the stores, then incomplete, and convey them to Mr. Brown, subject to the mortgage of $39,000.

300 Q. That was two mortgages?

A. Yes.

Q. Well, did you complete those stores?

A. Yes, sir.

Q. Were they compl-ted at the time that you had agreed with Mr. Brown to have them completed?

A. No, sir.

Q. Do you remember dates at all, so you could state when you were to have them completed?

—. I don't remember.

Mr. BURRY: All this, of course, goes in, subject to the same objection as before.

Q. Well, now, what was done in relation to the transfer of that property by you, I mean?

A. A deed was made, executed, and delivered.

Q. To whom was the deed made?

A. It was made to, I think—it was Lucy Brown. I am not sure of that. I supposed her to be the wife of John B. Brown.

Q. Do you remember what the contract provided in that regard as to whom the property should be conveyed?

Objected to.

A. It was not specified in the contract that I know of.

Q. Do you remember the terms of the contract in that respect, I mean?

A. Well, Mr. Brown was——

Q. I asked you whether you remembered substantially the terms of the contract?

A. The substance of it I remember, but the language I do not.

Q. What is your remembrance of the substance of the contract in relation to the property here to be conveyed?

Objected to.

A. I regarded Mr. Brown as my grantee.

Q. Do you remember anything in that contract providing for a conveyance to any one other than Mr. Brown or to Mr. Brown?

301 A. I think the conveyance was to Mr. Brown, but I am not sure of that.

Q. You think that that was the agreement?

A. Yes.

Q. How did you happen to make the conveyance to Mrs. Lucy T. Brown?

A. It was at his request or at the request of his broker; I could not say which.

Q. When was that request made?

A. Just prior to the conveyance.

Q. Had you ever known Mrs. Brown in the transaction in any way?

A. I had never heard the name until that time.

Q. Do you mean to say by that that you did not know Mrs. Brown in that transaction?

A. I did not know there was such a person; I did not know he was a married man.

Q. In regard to the mortgages to the Episcopal city mission, do you remember when they were delivered, the mortgages?

A. Simultaneously with the deed that they gave me of those two lots.

Q. Was that about the same time that you completed your transaction with Mr. Brown?

A. Something near; not far from that time.

Q. That is, what was done in the completion of that contract was done after that time that you received the deed or about that time?

Objected to as leading.

Q. I want to ascertain whether those acts were substantially simultaneous?

A. I don't remember, sir.

Q. Do you remember what conversation, if any, occurred between you and Mr. Brown or between you and the broker in reference to making the conveyance to Mrs. Brown?

A. I don't remember any. When we were ready to pass the papers I was requested to make the deed to this woman and I made it so.

Q. Was Mrs. Brown there at that time?

302 A. I don't know that she was; I did not see her.

Q. And you never have known her?

A. No; have sometimes doubted whether there is such a woman.

Q. What conversation, if any, occurred at that time in reference to the matter of the bond?

A. It was agreed between us that he should give a bond to hold me harmless against the notes secured by the mortgage.

Q. Did he make that proposition or did you?

A. I think it was by his broker that the transaction was made; I am not sure of that; it was agreed on between us.

Q. Was any reason stated for making that bond—any conversation as to any reason for making it?

A. None other than that he was responsible for the liability on the mortgage.

Q. Did you get certain property about the same time from him?

A. Yes.

Q. It was a partial exchange?

A. Yes.

Q. You assumed certain indebtedness of his, did you not?

Objected to as leading and incompetent.

A. Yes, sir; I assumed his indebtedness here and he assumed mine there?

Q. On that property?

A. Yes.

Q. On the property that you exchanged?

A. Yes.

Q. Do you remember any conversation in reference to the amount of that bond?

A. There was a talk of its being $5,000, and I thought until I came here that it was $5,000; I have heard since that it was $10,000.

Q. Under what circumstances was the amount of the bond fixed?

Objected to.

A. I don't remember.

Q. Where was that bond signed?

303 A. It was signed in Mr. Clarke's office, I think, where Mr. Brown had a desk, or in that same building.

Q. Who was present at that time?

A. Well, I don't know.

Q. You were there?

A. I was there when it was delivered, but I don't know that I saw the signature put on.

Q. Was Mr. Clark or Mr. Brown there, do you remember, or both of them?

A. They were, I think, when it was delivered to me.

Q. Any one else that you remember?

A. No.

Q. What did you do with that bond?

A. I carried it to Mr. Paine.
Q. The representative of the Episcopal city mission?
A. Yes.
Q. What did you do in reference to it with Mr. Paine?
A. I gave it to him.
Q. You have seen the bond here?
A. Yes.
Q. Did you make any assignment of that bond?
A. I think I did, but I don't recollect exactly.

(Bond produced and shown to witness.)

Q. Is that the bond?
A. I should judge it was.
Q. How did you happen to carry that to Mr. Paine?
A. I think it must have been at his request. I don't know now.
Q. Was that done immediately on its delivery to you?
A. I don't know; it was done very near that time That spring, when I closed up business with them, it was left with him, if not immediately.
Q. At whose suggestion did you take a bond in that case, Mr. Meserve?

Objected to.

A. I am unable to state who first suggested it.
Q. Had you had any conversation with Mr. Paine in relation to taking a bond before that time?
304 A. I don't know that I had.

Mr. OSBORNE: Mr. Burry, I gave you notice yesterday for the production of certain papers; one was the assignment of this bond, and the other was an authority or what purported to be an authority or something of that kind from Mr. Meserve to the Episcopal city mission for the bringing of a suit or suits in the name of Mr. Meserve or papers connected with that. Will you be kind enough to produce those papers?

Mr. BURRY: I received your notice yesterday and do not produce the papers.

Q. Mr. Meserve, do you remember, as a matter of fact, you did make an assignment of that bond or a transfer of it to the Episcopal city mission?
A. I don't recollect the act of making the assignment, but I have always regarded is as assigned and think I would not have left it there as my paper.
Q. Do you remember whether in fact you made a written assignment at any time of that bond?
A. No, sir.
Q. You do not remember as a fact whether you did or not?
A. No, sir. Still I can't see why I should have left it without it; why I should have.
Q. Can't you recall to your mind any reasons or circumstances leading to the taking of that bond from Mr. Brown?

A. Yes; it was to hold me against a possible loss on those notes.

Q. Can you recall any of the circumstances or reasons which led to the fixing of the amount of that bond?

A. Well, in my own mind it seems probable——

305 Objected to.

Q. Will you state what those facts and circumstances were?

Objected to.

A. To make Mr. Brown's liability equal to my own.

I had assumed about $10,000 in Chicago. My feeling was that he had assumed $39,000 there, and there could not possibly be a loss to that extent, if any. I did not feel that there would be any. I recollect it now as a sort of balance between us in our liabilities.

Mr. BURRY: All this is objected to.

Q. As a matter of fact it was not equal to the difference, was it?

Objected to as leading and incompetent.

A. I knew my mortgages to be well secured—mercantile property that could not depreciate to any great extent; his was secured by vacant land.

Q. Why did you take any bond at all, then?

A. Because I was deeding to a st-aw grantee, to somebody that I did not know.

Q. Well, why didn't you put the bond the whole amount of the difference, at any rate?

A. Because I knew there could be no possible way of making my security worthless by any handling it in three years; there could be no way the property was insured, and the land was there, which had cost almost the amount of the notes. Had the buildings burned down, the land, with $10,000, would have been security for my note.

Q. Did you inquire into the solvency of Mr. Brown?

A. I did not.

Q. Did you inquire into the solvency of Mrs. Brown?

A. No.

Q. Did you make any inquiries in relation to her?

A. No. Mr. Brown's broker recommended him to be a business man who would be likely to take care of his property, and I

306 regarded him as such.

Q. Mr. Meserve, did you perform your contract in reference to protecting Mr. Brown against the indebtedness which you assumed?

Mr. BURRY: All of this subject is objected to.

A. No, sir.

Q. Mr. Meserve, have you any pecuniary interest in the prosecution of this suit?

A. Yes.

Q. What is that interest?

A. To furnish an offset for the suits he has against me, helping the matter to a settlement.

Q. Have you ever paid anything on account of any of these offsets?
A. No, sir.
Q. When did you commence the prosecution of this suit?
A. I don't know.
Q. Did you ever employ any attorney to comm-nce this suit?
A. No, sir.
Q. Have you ever paid anything or are you liable for anything by which you would suffer damage by reason of any failure of Mr. Brown to pay the indebtedness which is alleged to be due to the Episcopal city mission under those mortgages?

Mr. BURRY: Objected to as calling for a legal conclusion.

A. I have paid nothing.
Q. Have you made an arrangement with the Episcopal city mission by which they have substituted any liability on your part for the supposed liability against Mr. and Mrs. Brown or any arrangement in relation to that matter?

Objected to as calling for a legal conclusion.

A. I gave the authority to bring this suit with the understanding that it would relieve me of liability.
Q. On those mortgages?
A. Yes.
Q. Was your authority that you gave to bring this suit in writing?
307 A. I think so; yes, sir.
Q. Have you a copy of that writing?
A. I have not.
Q. Can you state the terms of it more particularly?
A. I am unable to state the terms; saw the paper and executed it, but have no copy.
Q. At the time you made that were they prosecuting a suit against you or had they commenced a suit against you?
A. I think so.
Q. On those notes secured by a mortgage?
A. They brought a suit against me for $35,000.
Q. On the alleged deficiency under these mortgages?
A. Yes.
Q. When was that—about when?
A. I don't remember.
Q. Was it a year or two ago?
A. Four or five years ago; four years, perhaps.
Q. Have they ever prosecuted that suit since that time?
A. I do not know that they have.
Q. Was your understanding with them that they should not do so?

Q. Objected to.

A. Yes, sir.
Q. The bond alleged in the bill of complaint here provided "that it should remain in full force and authority only to the extent,

however, that the said Meserve suffers harm." Have you in any way suffered harm by reason of the transaction for which that bond was given?

Objected to.

A. I have paid nothing.

Q. Do you know of any way in which you have suffered harm?

Objected to as calling for a legal conclusion.

A. No; I can't say that I do.

308 Q. You know that property on Purchase St. mentioned in these two mortgages; those two stores?

A. Yes, sir.

Q. You built them, I understand?

A. Yes, sir.

Q. Have you known them since that time?

A. Yes, sir.

Q. Do you know the value of that property?

A. Yes, I should say that I did—my opinion of it.

Q. Did you know it at the time of this transaction with Mr. Brown?

A. Well, I think I did.

Q. What was the value of the property, in your opinion—those two stores—during the year 1884–'5?

A. I could not tell; I didn't see it at that time.

Q. What is the value of that property now?

Objected to.

A. $25,000 a house?

Q. For the whole of it; both stores?

A. Each building.

Q. Where are those buildings?

A. In the central part of the burnt district.

Q. Is it in the business portion of the city?

A. It is in about the center of the wholesale leather trade.

Q. What street does Purchase St. open out of?

A. It runs from Summer St. parallel with Atlantic avenue down to Washington square.

Q. It had been burnt over previous to your purchase?

A. Yes.

Q. You purchased the land free from the Episcopal city mission?

A. Yes; after their buildings had been destroyed.

Q. Is that in a part of Boston which is valuable for business purposes?

A. It is one of the best business centers in Boston; that section to hold property.

309 Q. How has it been since the time of the building of those stores?

A. There was a surplus of building when those were put up.

Mr. BURRY: It is understood that all this subject is objected to.

The city has now grown up to it.

Q. That is, the business has grown up to the supply?

A. Yes.

Q. Has it been available since its construction for rental for business purposes?

A. It has always been rented or should have been—might have been.

Q. How long do you carry back in your own mind the price of $25,000 for this property?

A. From the day it was finished.

Q. $25,000 a store?

A. Yes, sir.

Q. What did the construction of those stores cost apiece?

A. I don't know.

Q. Can you state about what?

A. Well, I should say $8,000 a building; I should say that was about the actual expenditure.

Q. Did the Episcopal city mission own that property before the fire?

A. Yes.

Q. Did you buy it of them?

A. Yes, sir.

Q. What did you pay per lot?

Objected to.

Q. What did you pay per lot?

Objected to.

A. I paid $67,000 and divided it into five lots.

Q. About even?

A. Nearly equal number of square feet.

Q. Was the property of about equal value—the frontage?

A. The frontage was about the same. One store was a little narrower on the back.

Q. How deep were the stores?

A. I think they are 55 feet, but I am not clear about that.

Q. And what is the frontage?

310 A. Twenty-five feet.

Q. You are a builder?

A. Yes, sir.

Q. And have been for many years?

A. Yes.

Q. Have you a copy of the authority that you gave to bring this suit?

A. No, sir.

Q. Was that authority made contemporaneously with your arrangement with them in relation to their discontinuance, or whatever it was, of their prosecutions against you on these notes—were these contemporaneous—I mean was the understanding contemporaneous?

Objected to, as the writing is the best evidence.

A. Yes, sir.

Q. Has there ever been an attempt made since that time to collect this alleged deficiency against you by the Episcopal city mission or any one for it?

A. No; I have never heard from it.

Q. At the time of making that arrangement did the Episcopal city mission give to you any written paper in relation to the matter?

A. No, sir.

Q. Does not your entire interest in this suit consist in the settlement of the claims against you under your assumption of the Brown indebtedness against this indebtedness?

A. That is the main feature, in my mind.

Q. Is that the only interest that you know of?

A. Well, I should be glad to have the matter settled and be entirely out of it.

Adjourned to 2 p. m.

311 Mr. OSBORNE:

Q. Mr. Meserve, in your direct examination you stated that you gave a written authority to bring this suit. Did that authority include any of the conditions or terms or agreements on which you gave it—that is, did the writing include anything of that sort?

A. I think it included everything that had been said and was for their exclusive benefit. I don't remember the language used in the little paper that I signed, but I remember of stating that it would not be my method and I had no interest in it.

Q. I think you still misunderstand it. You said that that was given on a certain understanding, I think the language was, between you and them in relation to the collection of these notes of you, or words to that effect. Now, I ask you whether that understanding in relation to the collection of the notes or the deficiency on the notes was or was not reduced to writing at that time; was it included in this authority which you gave to bring these suits?

Question objected to because it is leading and because it calls for an understanding.

Q. I want you to understand me. I don't ask you for an understanding. I ask you for your recollection of the contents of that paper which you spoke of as an authority to bring this suit, as to whether that included anything more than simply an authority—the paper itself—to bring this suit?

A. No; it did not.

Cross-examination by Mr. BURRY:

Q. You bought how many lots from the Episcopal city mission?

A. I bought one lot and subdivided it.

Q. Into how many?

A. Five.

312 Q. They advanced you how much?

A. The two called for——

Q. Never mind that; they advanced you how much?
A. About $17,000.
Q. And released one store?

Objected to as not proper evidence.

A. I made a mortgage — $12,000 on one store and $19,500 each on the other 4. This was a little store, an angular lot, nine feet wide on the back.
Q. It was estimated that they released that lot?

Objected to as not proper to call for an estimate.

Q. How much did they let you have?
A. Seventeen thousand and a fraction over.
Q. What else?
A. Nothing else; don't misunderstand me; this $17,000 applied to four stores instead of five. They made no advance on one store.
Q. Did they not give you any more than the $17,000?
A. The interest account and expenses. Well, the interest account was all; they were to make it up, $23,000.
Mr. OSBORNE: Don't speak of what they were to do; that is in writing, I suppose, and it is easy enough to produce that.
A. They loaned me $17,327.52 by their own account.
Q. Have you anything further to state; any further explanation to make?
A. No, sir.
Q. You have spoken, Mr. Meserve, of an agreement with the Episcopal city mission as to this suit and you have also stated that it was not in writing. Please state what that agreement was, with whom it was made, and where it was made.
A. It was made with one of their attorneys; I don't recollect the name.
Q. Describe him.
A. I don't know that I can. Whether it was Mr. Racke-
313 mann or Mr. Balch I am unable to state.
Q. Mr. Balch is an old man with thin whiskers?
A. I remember them both as being associated with this matter, but I can't recollect which one it was that came to me.
Q. Where was it made?
A. It was made in the prison.
Q. Where?
A. At Charlestown.
Q. What time?
A. I could not tell you, sir. I saw them there several times. I don't remember the dates.
Q. How many times did you see them?
A. I think it was three times; it might have been four.
Q. Was it the same person you saw each time?
A. I think it was not. I am not quite clear about that. My impression is that it was Mr. Rackemann that I conversed with.
Q. Did you ever see Mr. Balch there?
A. I would not say that I did, but I would not say that I did not.

Q. What was the agreement about?
A. Discontinuing their suit against me.
Q. What was the agreement?
A. They were to do so and pursue Mr. Brown.
Q. Was that all there was about it?
A. Yes, sir.
Q. What was the consideration for that agreement?
A. Nothing; only that I gave them the authority.
Q. To do what?
A. To sue in my name.
Q. Was that in writing?
A. Yes, sir.
Q. When was it made?
A. I don't remember.
Q. It was made during the time they saw you there?
A. Yes, sir.
Q. And you say that was the consideration for the agreement?
A. Yes.

Q. And they further agreed that they would prosecute
314 this suit at their own expense, did they?

Objected to as not a correct statement of what the witness has stated.

A. To answer that I would say the agreement was in writing what they should do, the agreement to assume all the expenses of the suit in writing, that they should do it at their own expense.
Q. How about the other agreement?
A. There was nothing about that.
Q. That was secret?
A. Not secret; only it could not be put into writing, because, as they said, it would destroy the life of the notes to make any paper in regard to releasing the promissor.
Q. The attorney for the mission stated that, did he?
A. That was said; yes.
Q. By the attorney for the mission?
A. Yes, sir.
Q. Was that all that was said at that interview?
A. All that I recollect.
Q. And you signed the paper?
A. I didn't sign the paper then, but at some subsequent time; I don't remember exactly. I think the paper was not prepared at that time.
Q. Is that the only paper you have ever signed?
A. I think they have had two or three papers for me in regard to this. I am not clear in regard to the matter. I have signed no papers except with the attorneys for the city mission.
Q. Never signed any papers except for these attorneys?
A. No, sir.
Q. This bond was only taken because you supposed Mrs. Brown was the grantee, was it?

Objected to as being an assumption, his understanding of what the witness testified to.

A. The bond was given to hold me harmless against loss or damage on the notes.

Q. Answer my question.

315 A. That is an assertion and a question combined; what shall I say?

Q. Answer the question.

A. I knew Lucy T. Brown to be the grantee; that was the name of my grantee. I took the bond from him whom I had made the trade with.

Q. If the deed had been made to Brown you would not have asked for any bond?

A. No, sir.

Q. You only asked for it when you were told that Lucy T. Brown was the grantee?

A. That was when it was first thought of.

Q. Have you paid anything on this indebtedness, Mr. Meserve?

A. These notes?

Q. Yes.

A. No; I have not.

Q. Have you any property?

Objected to as irrelevant to the issue.

A. No, sir.

Q. Who was present at the interview when this agreement was made with the attorney for the mission?

A. No one but myself and the attorney.

Q. At the time you deeded this property to Mrs. Brown did you suppose Mr. Brown was solvent?

Objected to as irrelevant.

A. Yes, sir.

Q. You supposed that you could enforce any contract that he made with you?

Objected to as irrelevant.

A. I supposed that he was responsible for his contracts.

Q. In your direct examination you said that you paid $67,000 for a lot which was afterwards divided into five lots besides the money which the Episcopal city mission advanced you. Did

316 they give you anything else in connection with those lots?

A. No, sir.

Q. In your direct examination you said that this agreement which is not in writing was made at the time you gave them authority to sue in your name; that agreement was made, then, on the date of that authority, was it?

A. I can't say that it was. That was talked over, and I saw them several times, but I don't remember. The paper was executed to them with the understanding that I should be left out.

Q. That you should be left out of the suit?

A. From all responsibility in the suit.
Q. That you would not be sued in any suit?
A. They were to sue in my name.
Q. If they sued in your name you would not be unmentioned in the suit?
A. Oh, no.
Q. They were not to ask for any judgment against you?
A. They were to get satisfaction from Brown and not from me.
Q. Now, Mr. Meserve, will you tell us what the conversation was, what they said and what you said?
A. I can't give the conversation, sir.
Q. Can you give the substance of it?
A. It is a good while ago since I saw them, since the arrangement was made; they had a suit against me at the time, and if I would give them authority to sue Mr. Brown they would drop that, would leave me out.
Q. Is that the substance of the conversation as near as you can remember?
A. Yes; that is the substance of it.

Q. But if that agreement, the authority which you signed,
317 is acknowledged before an officer the date of that acknowledgment would be the date of this agreement, wouldn't it?

Objected to.

A. Not necessarily; I think the agreement was not drawn at the time we had these talks.
Q. When were you first asked to testify in behalf of Mr. Brown in this case?
A. Two weeks ago tomorrow, I think it is.
Q. By whom?
A. I had a letter from Mr. Brown to know if I would come here and give my testimony in the suit.

Answer objected to in regard to the contents of the letter and motion made to strike out that portion.

Q. Did you talk over with Mr. Brown or his attorneys what your evidence would be in this case?
A. I did not, sir.
Q. You did not tell them what you were going to testify to?
A. No, sir.
Q. What did you tell them?
A. I had not seen them, sir.
Q. You had not seen Mr. Brown or his attorneys to talk this matter over with them?
A. When I came here, until I came here——
Q. Did you talk over with Mr. Brown or his attorneys before you went onto the stand what your evidence would be in this case?
A. I misunderstood you before; my mind was back in Boston; Mr. Brown telegraphed to me; when he wrote to me I had not seen his attorneys in Boston and I had not seen him, but I did not an-

swer the letter only by telegram that I would come, and when I came here I saw Mr. Brown and I saw his attorney.

318 Q. Did you talk over what your evidence would be?

A. I showed them my papers and talked of the case.

Q. Did they explain the points to you that they wanted to prove in the case?

A. No, sir; I don't think there was anything said about what they wanted to prove; they desired to get at the facts.

Redirect examination:

Mr. OSBORNE: Did you talk with them, Mr. Brown and myself, in relation to the facts in the case as to what you knew about the matter?

A. Yes.

Mr. OSBORNE: Mr. Burry, I called on you for the production of certain papers, one of which was the authority that this witness speaks of that appears of record; I ask you to produce them now.

Mr. BURRY: You called on me for them, sir, and I answered you; I think I can turn to it here.

Mr. OSBORN: I call on you again, now, to produce them.

Mr. BURRY: Yes; and I do not produce them.

Mr. OSBORNE to the witness:

Q. Have you your contract with the Episcopal city mission?

A. Yes.

Q. Will you produce it?

(Paper produced by witness.)

Q. Mr. Meserve, your contract with the mission was made some time before your contract with Mr. Brown, wasn't it?

A. Yes, sir.

Q. Now, what were the notes and mortgages which you made to the Episcopal city mission on this property; what was the amount stated in these mortgages composed of; how was it arrived at?

A. It was a quarter part of the evidences and a *pro rata* amount of the land.

Q. What do you mean by *pro rata?*

319 A. I mean the land was reckoned by the square feet, and the number of feet on each lot bore its own price that, with a quarter of the advances, made the amount of the notes $19,500.

Q. The amount of each of the notes?

A. Yes.

Q. The number of square feet in that lot?

A. Yes.

Q. That was the proportionate price of the purchase-money of the lot?

A. Yes.

Q. And a quarter of what the Episcopal city mission had ad-

vanced to you during the completion of these stores on account of your contract?

A. On my contract.

Adjourned to 11 o'clock a. m. March 9th.

GEO. W. MESERVE.

Subscribed and sworn to before me this 10th day of March, A. D. 1888.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

320 *Testimony of Lucy T. Brown, Taken Before Henry W. Bishop, Master in Chancery of said Court, on Friday, the 9th Day of March, A. D.* 1888.

Present: Mr. Burry, for compl't; Mr. Osborne, for def'ts.

Mrs. LUCY T. BROWN, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. OSBORNE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Lucy T. Brown.

Q. Where do you reside?

A. In Chicago.

Q. How long have you resided here?

A. Since 1871.

Q. You are the wife of John B. Brown?

A. Yes.

Q. And one of the defendants in this case?

A. Yes.

Q. In the spring and early summer of 1877 where were you?

A. I was in Georgetown, Massachusetts.

Q. Did you spend the winter there?

A. I think I did.

Q. Mr. Brown was there with you?

A. He was there part of the time.

Q. Do you know any of the officers or representatives of the Episcopal city mission?

A. I do not.

Q. Did you ever know them?

A. I never did.

Q. Do you know Mr. Meserve?

A. I do not.

Q. Did you ever know him?

A. I never saw him.

Q. Did you have any connection with the negotiation of the contract or agreement with Mr. Meserve for the purchase of two lots with stores upon them or being built upon them in Purchase St., in Boston?

A. I did not.

Q. Did you know anything about that contract?

A. I did not.

321 Q. It appears that under date of the 1st day of March, 1877, two deeds were made to you from George W. Meserve for certain property on Purchase St., Boston. I now hand you the original deeds, which please examine and state when you first saw them.

A. I do not remember that I ever saw them before.

Q. Before this time?

A. This time.

Q. When did you first know that any deed had been made to you of that property?

A. I can't recall the time; possibly very near that time.

Q. Did you know the contents of these deeds?

A. I did not.

Q. It is claimed that by those deeds you assumed and agreed to pay certain mortgages upon this property. When did you first know of that claim?

A. I did not know of it.

Q. Did you ever knowingly assume the payment of any sum of money?

A. I never did.

Q. Had you any pecuniary interest in that property or any of it?

A. I never had.

Q. Did you ever give any authority or have any agreement or understanding with your husband, Mr. Brown, that he might assume the payment of the mortgages which are mentioned in this bill of complaint?

The question objected to so far as it calls for an understanding.

Q. I will change the form of the question and ask you whether you ever gave any authority to Mr. Brown to assume the payment of these mortgages mentioned in this bill of complaint or any part of them.

A. I never did.

322 Q. Did you know that Mr. Brown had made or attempted to make any assumption on your part of the payment of those mortgages?

A. I never did.

Q. When did you first become aware there was any claim of liability on your part to pay any portion of these mortgages, the whole or any portion of those mortgages?

A. Not until this suit was brought.

Cross-examination.

By Mr. BURRY:

Q. Who first told you that those deeds had been made?

A. Mr. Brown.

Q. Just what did he say to you at that time?

A. I can't recall.
Q. As nearly as you can?
A. I think he simply said the deeds had been made in my name. I do not recall anything more than that.
Q. What did you say to him?
A. I do not remember.
Q. As nearly as you can?
A. Perhaps I said, "Thank you." I do not know. I do not remember saying anything.
Q. You did not make any objection that you remember?
A. I do not remember.
Q. About that time how long had you been living in Georgetown?
A. I was simply staying there for a time. I was not living there.
Q. Where was Mr. Brown staying?
A. He was there part of the time and here part of the time.
Q. What business was he engaged in there?
A. Not any.
Q. What business was he engaged in here?
A. The railroad business.

323 Q. What were his circumstances financially at that time?

Objected to as irrelevant and as not proper cross-examination.

A. I can't tell you.
Q. Do you know whether he was in embarrassed circumstances at that time?

Objected to as irrelevant.

A. He was not.
Q. Were you familiar with his circumstances financially at that time?

Objected to as before.

A. Yes.

Signature waived.

Mr. OSBORN: At the request of defendants' solicitor the solicitor for the complainant furnishes to him the statements of account of the receipts of rent, expenditures, etc., copies of which are hereto attached and marked Exhibits 17 and 18, and the defendants offer the same to prove the receipt of the rents and the times of such receipts and the times and amounts of the several sums paid out in connection with the matter; and thereupon the defendants rest.

(Endorsed:) Filed Dec. 21, 1889. Wm. H. Bradley, clerk.

324 Afterward, to wit, on the thirteenth day of May, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE EPISCOPAL CITY MISSION *et al.* } In Chancery.
vs.
LUCY T. BROWN *et al.*

Now come the parties, by their solicitors, and this cause, being set for hearing this day, now comes on to be heard upon pleadings and proofs, and after hearing the arguments of counsel the court takes the same under advisement. Leave is given complainant to file an amended bill herein.

On the same day, to wit, on the thirteenth day of May, 1890, came the complainants, by their solicitor, and filed in said clerk's office their amended bill in said entitled cause; which said amended bill is in the words and figures following, to wit:

Amended Bill.

325

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois,

The amended bill of complaint in this cause filed by leave of court first had and obtained.

To the judges of the circuit court of the United States for the northern district of Illinois:

The Episcopal city mission, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and George W. Meserve, of Charlestown, in the said Commonwealth, a citizen of the Commonwealth of Massachusetts, bring this their bill of complaint against Lucy T. Brown and John B. Brown, of Chicago, citizens of the State of Illinois.

And thereupon your orators complain and say—

That on or about the 6th day of January, A. D. 1877, your orator George W. Meserve and the defendant John B. Brown entered into a certain contract in writing in and by which, among other things, your orator Meserve agreed to convey to the said John B. Brown two lots of land lying on Purchase street, in the city of Boston, in Massachusetts aforesaid, bounded and described as follows, to wit,

326 lots numbered three (3) and four (4) on a plan of S. C. Ellis, dated 24 October, 1876, and recorded with the deed from your orator The Episcopal City Mission to your orator Meserve, dated 2 October, 1876, and recorded with Suffolk deeds in Book 1354, at page 163, with all the rights and easements thereto belonging, and especially with all rights in a four-foot passageway leading northeasterly to a five-foot passageway leading southeasterly to Atlantic avenue, both of which passageways are shown on said plan;

also with all rights of light and air and passage in a strip of about five feet wide lying between the northerly side of said four-foot passageway and the southerly face of the store on the northeasterly side of the granted premises, being lot number four on said plan, and said strip extends the whole width of said lot number four; it being hereby provided that the brick walls on the two sides of the granted premises shall be party walls, in which all parties, their heirs and assigns, shall have all rights of using, extending, repairing and rebuilding, and any other usual rights forever, each lot to be subject to a mortgage for $19,500 to your orator The Episcopal City Mission; and the said John B. Brown agreed to assume and pay as a part of the purchase-money the said mortgages and to save Meserve harmless therefrom; and the said John B. Brown agreed to convey to your orator Meserve certain premises in the county of Cook and State of Illinois, known and described as follows, to wit:

Lots numbered fifteen (15) to twenty-four (24), both inclusive, in block one (1), in Wright and Windett's subdivision of the northwest quarter (N. W. $\frac{1}{4}$) of section nine (9), township thirty-
327 eight (38) north, range fourteen (14) east, of the third principal meridian (situate corner of Wallace and 54th streets), subject to a trust deed to D. K. Pearsons, trustee, dated April 18, 1874, to secure a note of the party of the first part for twenty-five hundred dollars ($2,500), dated April 1, 1874, running for five years from date, with interest on the same at the rate of ten per cent. per annum from April 18, 1875; also a trust deed to Peter Scheulter, trustee, dated April 1, 1875, to secure eight (8) notes of the party of the first part for thirty-four hundred sixty-five and $\frac{70}{100}$ dollars ($3,465.70), dated April 1, 1875, running one year from date, but extended for a further term of one year, with interest on the same at the rate of ten per cent. per annum from date of notes aforesaid; also subject to the taxes and assessments for 1875 and subsequent thereto; also blocks one (1), two (2), and three (3), of thirty-four (34) lots each, in Newell's addition to Park Ridge, being a subdivision of part of the west half (W. $\frac{1}{2}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section thirty-five (35), town. forty-one (41) north, range twelve (12) east, of the third principal meridian, subject to a trust deed to Geo. A. Follansbee, trustee, dated July 20, 1878, to secure a note of James H. Wetherell and Kirk B. Newell for thirty-four hundred dollars ($3,200), dated July 26, 1878, running for five years from date, with interest on the same at the rate of eight per cent. per annum from January 26, 1876; also a trust deed to Geo. A. Follansbee, trustee, dated July 26, 1876, and running for ten years from date, with interest on the same at the rate of eight per cent. per annum from July 26, 1876, twenty-six hundred and eighty dollars ($2,680) of the principal having been paid and cancelled.

And your orator Meserve, as a part of the purchase-money,
328 agreed to assume and pay all the said notes and incumbrances, together with the interest, taxes, and assessments as above set forth, and to save the said John B. Brown harmless therefrom.

Your orators further show that they cannot at present attach a copy of the said contract, because none is now in possession of your orators, but they pray leave to attach hereto a copy thereof if they are able to procure the same, and to mark it Exhibit "F" and make it a part hereof.

That your orator Meserve conveyed to your orator The Episcopal City Mission the two lots aforesaid by mortgage deeds, each dated the 1st day of March, 1877, each given to secure the sum of $19,500 and interest thereon, as will more particularly appear from the mortgages, copies of which are hereto attached as a part hereof and marked respectively Exhibit "A" and Exhibit "B;" that by a deed of the same date your orator Meserve, at the instance and request of the said John B. Brown, conveyed the said lot three (3) to the defendant Lucy T. Brown, who is the wife of the said John B. Brown, subject, however, to mortgage placed thereon as aforesaid, in which deed the said Lucy T. Brown was made to assume and agree to pay the said mortgage and to protect and save harmless your orator Meserve therefrom; and by another deed of even date, at the like instance and request of the said John B. Brown, your orator Meserve conveyed to the said Lucy T. Brown the said lot four (4), subject, however, to the mortgage placed thereon as aforesaid, and by that deed also the said Lucy T. Brown was made to assume and agree to pay the said mortgage on lot four (4) and to protect and save harmless your orator Meserve therefrom,
329 copies of which deeds to the said Lucy T. Brown are hereto attached as parts hereof and marked respectively Exhibit "A 1" and Exhibit "B 1."

That at the time of the execution of the said deeds the defendant John B. Brown executed to your orator Meserve a penal bond, a copy of which is hereto attached as a part hereof and marked Exhibit "C," in the penal sum of $10,000, conditioned as follows:

"Whereas the said George W. Meserve did by deed dated March 1st, 1877, convey unto Lucy T. Brown two separate estates on Purchase street, Boston, Mass., each estate being subject to a mortgage for $19,500, at 6½ per cent. interest, to the Episcopal city mission, of even date with said deeds, which said mortgages and interest thereon the said Lucy T. Brown assumed and agreed to pay and hold the said Meserve harmless therefrom:

"Now, therefore, if the said Lucy T. Brown shall perform the obligations of said deeds therein expressed and save the said Meserve harmless, then this obligation shall be void; otherwise it shall be and remain in full force and virtue, only to the extent, however, that the said Meserve suffers harm."

That default having been made in the payment of the several sums secured by the said mortgages your orator The Episcopal City Mission, under and in pursuance of the powers contained in the respective mortgages, caused foreclosures of the said premises to be made on the 12th day of March, A. D. 1884; that the proceeds of the sales of the said premises were not sufficient to pay the moneys due on the said mortgages, and the resulting deficiency on said lot

three (3) was $10,574.71 and on lot four (4) $10,074.71, which
330 sums, with interest thereon at the rate of six and one-half (6½) per cent. per annum, still remains due and owing to your orator The Episcopal Mission.

That your orator Meserve is utterly irresponsible financially and insolvent and unable to pay the amounts so remaining due or any part thereof.

That your orator The Episcopal City Mission has frequently applied, both on its own behalf and for and on behalf of your orator Meserve, to the said John B. Brown and Lucy T. Brown to pay the moneys so remaining due to your orator The Episcopal City Mission under the mortgages assumed as aforesaid.

And your orators well hoped that the said John B. Brown would have complied with the reasonable requests of your orators, as in justice and in equity they ought to have done.

But the said John B. Brown and Lucy T. Brown absolutely refuse to comply with the rea-onable requests of your orators, and the said defendants sometimes pretend and say that the said lots were sold by your orator Meserve to the defendant John B. Brown and not to Lucy T. Brown; that the conveyances made by your orator Meserve to the defendant Lucy T. Brown were made without her knowledge or consent and wholly at the request of the defendant John B. Brown and for his use and in pursuance of said contract between your orator Meserve and John B. Brown, and that the deeds were not known to or authorized by Lucy T. Brown and were never delivered to her or excepted by her, and that Lucy T. Brown never assumed or agreed to pay said mortgages or either of them or to protect or save your orator Meserve harmless therefrom,
and that she is in no way indebted to your orator Meserve
331 or your orator The Episcopal City Mission, and sometimes pretend and say that the making of the deeds to Lucy T. Brown instead of to John B. Brown and the execution of the bond by John B. Brown was a modification of the said contract and relieved the said John B. Brown from all liability for the said mortgages under his said contract; and the defendants further pretend and say that your orator Meserve is indebted to your orator John B. Brown in a greater amount than the indebtedness aforesaid; that he, the said John B. Brown, is entitled to offset the moneys so pretended to be due from your orator Meserve against the moneys so due to your orator The Episcopal City Mission on the mortgages aforesaid, and pretend and say, also, that your orator Meserve has released and discharged the said John B. Brown from the said indebtedness, whereas your orators charge the contrary to be true, and that your orator Meserve is not indebted to the said John B. Brown in any amount whatever, and that if your orator Meserve were so indebted to the said John B. Brown he, the said John B. Brown, is not entitled to offset such indebtedness against the amounts due your orator The Episcopal City Mission on the mortgages aforesaid, and that your orator Meserve has not in any way released or discharged the said John B. Brown from said indebtedness or any part thereof, and that if the said deeds to Lucy T. Brown were made

without her consent and knowledge and if the said Lucy T. Brown never authorized or empowered John B. Brown or any one on her behalf to receive the said deeds for her and never received or accepted them the said John B. Brown, at the time he pretended to act for and on behalf of the said Lucy T. Brown, so acted without authority and knew he was so acting without authority, and
332 by falsely and fraudulently pretending that he was authorized by the said Lucy T. Brown to receive the said deeds for her and on her behalf and to bind her by the assumptions therein induced your orator Meserve to make the deeds to Lucy T. Brown and to receive the bond aforesaid for and instead of a performance of the contract made as aforesaid.

All which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wring, injury, and oppression of your orators in the premises. In tender consideration whereof, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are relievable only in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said John B. Brown and Lucy T. Brown may to the utmost of their respective knowledge, remembrance, information, and belief full, true, direct, and perfect answer make (but not under oath, answers under oath being hereby waived) to all and singular the matters aforesaid, and that as fully and particular- as if the same were repeated and they and each of them distinctly interrogated thereto; that an account may be taken under the direction of this honorable court of the amounts due your oraaors The Episcopal City Mission under the said mortgages, and that your orator The Episcopal City Mission may be subrogated to all the rights of your orator Meserve in the premises, and that the said John B. Brown and Lucy T. Brown or one of them may be decreed to pay the same unto your orator The Episcopal City Mission, and that your orator may have such other, further, or differ-
333 ent relief in the premises as the nature of the case may require and to your honors shall seem meet—

May it please your honors to grant unto your orators a writ of subpœna to be directed to the said John B. Brown and Lucy T. Brown, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree herein as to your honors shall seem meet.

And your orators will ever pray, etc.

THE EPISCOPAL CITY MISSION,
By GEORGE BURRY, *Its Solicitor.*

GEORGE BURRY,
Sol'r & of Counsel.

(Endorsed:) Filed May 13, '90. Wm. H. Bradley, clerk.

334 Afterward, to wit, on the twenty-sixth day of May, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE EPISCOPAL CITY MISSION *et al.*
vs.
LUCY T. BROWN *et al.*
} In Chancery.

Now come the parties, by their solicitors, and the defendants are hereby ruled to plead, answer, or demur to the amended bill herein within two days.

Afterward, to wit, on the twenty-eighth day of May, 1890, came Lucy T. Brown, by her solicitors, and filed in said clerk's office her answer to the amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

335 *Answer of Lucy T. Brown to Amended Bill.*

United States Circuit Court, Northern District of Illinois.

THE EPISCOPAL CITY MISSION *et al.*
vs.
JOHN B. BROWN *et al.*
} In Equity.

The answer of Lucy T. Brown, defendant, impleaded in the above-entitled cause, to the amended bill of complaint therein.

This defendant, protesting that the said amended bill of complaint filed by the complainants after the said cause had been heard and submitted to the court is uncertain and insufficient, and that this defendant should not be required to answer the same, and not waiving the advantage of demurrer thereto, for answer to said amended bill of complaint and to such parts thereof as she is advised that it is material for her to answer, answering, says that she is informed that about the 16th day of January, 1877, a contract in writing was made between said Meserve and said John B. Brown for the exchange of the properties described in said bill substantially as alleged therein; but she is not informed as to the precise terms and provisions of said contract nor as to whether the same are fully and correctly stated in said bill, and can therefore neither admit nor deny the same.

Further answering, this defendant says that she was not a
336 party to said contract and had no knowledge thereof, and that she had no knowledge of the making of said deeds to her by said Meserve nor of the alleged provisions therein whereby the grantee assumed to pay the said mortgages thereon, and never saw said deeds or consented to the making thereof, and she denies that she is in any way liable to the complainants for the alleged

deficiencies on said mortgages or otherwise; and for further answer she adopts her answer to the original bill herein, and prays that it may be taken and considered as part hereof.

LUCY T. BROWN,
By OSBORN & LYNDE,
Her Solicitors.

C. M. OSBORN &
S. A. LYNDE, *Counsel.*

(Endorsed:) Filed May 28, 1890. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-eighth day of May, 1890, came John B. Brown, by his solicitors, and filed in said clerk's office his answer to the amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

337 *Answer of John B. Brown to Amended Bill.*

In the United States Circuit Court, Northern District of Illinois.

THE EPISCOPAL CITY MISSION *et al.*
vs.
JOHN B. BROWN *et al.* } In Equity.

The answer of the defendant John B. Brown to the amended bill of complaint in the above cause.

This defendant protests against the filing of said amended bill of complaint after the hearing of said cause and the many errors and insufficiencies thereof, and says that he ought not to be required to answer the same, and that the said amended bill is uncertain and insufficient, and he prays that he may be allowed the benefit of demurrer thereto.

And, without waiver of his demurrer to said amended bill, for answer to such parts thereof as he is advised that it — material for him to make answer to he says that he admits that a contract in writing was made and entered into by this defendant and said Meserve about the 6th day of January, 1877, substantially as alleged in said amended bill, and that by said contract Meserve agreed to convey to this defendant the said two Purchase-street lots, and this defendant agreed to assume and pay the said two mortgages thereon, and this defendant was to convey to Meserve the said Cook county lands, and the latter agreed to assume and pay the said mortgages thereon.

338 Further answering, this defendant says that thereafter the said agreement was changed at his request, and that instead of conveying the said Purchase-street lots to this defendant said Meserve agreed to and did convey them to said Lucy T. Brown, who is the wife of this defendant, and in place of requiring this defendant to assume and agree to pay the said mortgages on said lots Meserve agreed to accept from this defendant in place of his personal covenant and assumption thereof his obligation of indemnity, which

is the penal bond mentioned in said amended bill and of which a copy is made an exhibit thereto, marked "C."

This defendant further says that said Meserve was not in any way mislead by any claim of authority on his part to act for said Lucy T. Brown, and that he made no such claim, and he denies that he in any way misrepresented to said Meserve that he was authorized by her to receive such deeds on her behalf or to bind her by the covenants therein, or that he in any way by false representations persuaded said Meserve to consent to change the said contract.

On the contrary, he avers the fact to be that said Meserve well knew at the time when he consented to the change in the said contract that said Lucy T. Brown was but a "straw grantee" and that the conveyances were to be made to her solely for this defendant's use, and that said Meserve then and there required as a condition upon which alone he would consent to said change and would be willing to release this defendant from his agreement to assume and pay said mortgages that this defendant should give his bond of indemnity in such amount as said Meserve at the time thought
339 would be ample to save him harmless from any loss or damage by reason of his giving up the personal liability of this defendant to pay said mortgages and making these conveyances to said Lucy T. Brown.

And this defendant further avers that at the request of said Meserve the amount of the said bond was fixed at $10,000.00, and that this defendant executed and delivered his said bond of indemnity, and said bond was executed by Meserve and accepted by him in place of this defendant's former agreement to assume and pay said mortgages, and that by reason thereof the said contract as originally made between him and Meserve was changed in this respect and this defendant became released from any liability to pay said mortgages and became holden and bound to said Meserve solely upon his said bond of indemnity. Defendant admits that said Meserve conveyed the said two lots to said Lucy T. Brown by the deeds mentioned in and made exhibits to said amended bill, and that this defendant executed and delivered to said Meserve his said bond, which said bond contained the said condition stated in said bill; but defendant avers that the said bond was simply a bond of indemnity and, as expressly conditioned therein, was to remain in force "only to the extent that said Meserve suff-rs harm."

Defendant admits that the said city mission caused foreclosure sales to be made of the said two lots, and that the proceeds of such sales were not sufficient to pay the moneys due on the said mortgages, and that the resulting deficiencies were as stated in said bill; but defendant avers that the said foreclosure sales were forced sales, and that the property did not realize its fair value at such
340 sales, but that each of said lots was fairly worth greatly more than the amount at which the mortgagee purchased them at its own sales, and was worth the full amount of the mortgage indebtedness then due. Defendant further avers that at the said foreclosure sales the mortgagee became the purchaser and thereafter made conveyances of said lots to itself, but, not being satisfied with

the title thereby acquired to the mortgaged property, it proceeded under the statute of Massachusetts then in force to foreclose its said mortgages upon said premises by entry thereon for foreclosure, and that it thereby became bound to account for the full value of the said property; and defendant further avers that at that time said property was fairly worth more than the amount due to said mission on its said mortgages, and that by reason of its entry for foreclosure the full value of the property, regardless of the amount realized from said forced sales, should be applied in payment of the debt due to said mission, and, being so applied, would fully pay and satisfy said debt and leave nothing due to said mission.

Defendant is informed and therefore admits that said Meserve is wholly insolvent and irresponsible and unable to pay the said sums claimed as due upon said mortgages, and says that said Meserve has never been obliged to pay out any moneys on account of said mortgage indebtedness, and has never suffered any harm or loss by reason thereof and cannot suffer any harm or loss; wherefore this defendant says that under the conditions of his said bond there can be no liability on his part to said Meserve.

Defendant further says that, as he has already set forth at length to the original bill herein, said Meserve failed to pay the mortgages upon the Cook county lands which were assumed by
341 him and which he agreed with this defendant by the covenants of the conveyance to him thereof to assume and pay, and this defendant was obliged to pay the said indebtedness, amounting in all to about $10,000, and is now entitled to offset the said indebtedness so paid by him on account of Meserve's failure to comply with the covenants of the deed to him against any liability on his part to said Meserve under his said bond or arising otherwise from this transaction. Defendant says that he is not in any way liable to said Meserve under the original agreement, and that he is not in any way liable to him under the said bond, which was given by defendant in place of the said agreement, for the reason that said bond was purely for indemnity, and said Meserve has not been obliged to pay out any moneys on account of said mortgages, and that the said Episcopal city mission has no right or claim against him for the payment of the said mortgages or of any balance that may be due thereon save and except in the right of Meserve.

Defendant avers and shows to the court that any claim to or pretense of liability on his part to the said Meserve under the said original contract between him and said Meserve or because of his having requested the said Meserve to change the said contract and make the said conveyances to said Lucy T. Brown instead of to this defendant is a stale claim and one which a court of equity ought not to recognize and entertain.

That the said agreement between him and Meserve was made more than thirteen years ago and was changed at the request of this defendant, and this defendant was released by said Meserve from any personal liability to pay the said mortgage, and said
342 Meserve accepted and exacted from this defendant, in consideration of such change in said contract, his said bond more

than thirteen years before the filing of the said amended bill, and that the making of the said agreement and the change thereof and the execution of the said bond were all averred and set forth in the answer of this defendant to the original bill herein almost four years prior to the filing of the said amended bill, and so this defendant says that the said complainants ought not to be heard now to assert as against this defendant any claim or pretense of liability on his part because of the making of the said agreement or of the change thereof; that the said Meserve could not now assert any such claim against him in an action at law, nor should the said Episcopal city mission, which can only claim in the right of the said Meserve, be heard to make such assertion in this court of equity.

And now, having answered the said amended bill as fully as he is advised that it is necessary for him to make answer thereto, this defendant prays to be dismissed hence with his costs in this behalf most wrongfully sustained.

JOHN B. BROWN,
By OSBORN & LYNDE,
His Solicitors.

C. M. OSBORN &
S. A. LYNDE, *Counsel.*

(Endorsed:) Filed May 28, 1890. Wm. H. Bradley, clerk.

343 Afterward, to wit, on the thirty-first day of July, 1890, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE
vs.
LUCY T. BROWN and JOHN B. BROWN.

BLODGETT, *J.*:

The bill in this case seeks to enforce payment of deficiencies remaining unpaid on two mortgages of $19,500 each, given by George W. Meserve to the Episcopal city mission of the city of Boston on March 1, 1877, on certain lots in the city of Boston, the property covered by the mortgages having been conveyed by Meserve to the defendant Lucy T. Brown, wife of the defendant John B. Brown, with a clause in the deed of conveyance by which the grantee assumed and agreed to pay the mortgages in question, and said mortgages having been foreclosed, leaving the deficiencies now in controversy. The facts, as they appear from the proofs, are—

That about the 6th day of January, 1877, Meserve, by a contract in writing, agreed to sell to defendant John B. Brown lots 2 and 3, on Purchase St., in the city of Boston, subject to a mortgage on each lot to the complainant The Episcopal City Mission for $19,500, which mortgage Brown was to assume and pay, and Brown was to

pay Meserve in part by conveying to him certain lots and lands in and about the city of Chicago upon which there were incumbrances to the amount of something over $10,000, which Meserve was to assume and pay.

344 In the early part of March, 1877, the parties were ready to exchange deeds, when Brown requested Meserve to make the deeds of the Boston property to his wife, the defendant Lucy T. Brown. Meserve hesitated about complying with this request on the ground that he knew nothing of Mrs. Brown's pecuniary responsibility and did not know that her agreement to pay the mortgages upon the Boston lots would be a sufficient guaranty to him that they would be paid. To obviate this objection Brown proposed to give his individual bond to Meserve, by which he should guarantee the performance of Mrs. Brown's assumption of the mortgage indebtedness.

This proposition was satisfactory to Meserve, and separate deeds to Mrs. Brown for each of the Boston lots, each of which contained an assumption clause as follows:

"And this conveyance is now made subject to a mortgage on said store for $19,500, made by me to said Episcopal city mission, which mortgage, with all interest thereon, said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless the said grantor therefrom."

And in the deed of Brown to Meserve of the Chicago property a similar clause was inserted, by which Meserve "assumed and agreed to pay as his own debt, as a part of the purchase price, the incumbrances on said property and save and keep Brown harmless therefrom."

The bond given by Brown to Meserve was in the following language: "Know all men by these presents that I, John B. Brown, am holden and stand firmly bound unto George W. Meserve in the sum of $10,000, to the payment of which to the said Meserve

345 and his executors, administrators, or assigns, I hereby bind myself, my heirs, executors, and administrators.

"The condition of the above obligation is such that, whereas the said George W. Meserve did, by deed dated March 1, 1877, convey to Lucy T. Brown two separate estates on Purchase street, Boston, Mass., each estate being subject to a mortgage of $19,500 at 6½ per cent. interest to the Episcopal city mission of even date with said deed, which said mortgage and interest thereon said Lucy T. Brown assumes and agrees to pay and hold the said Meserve harmless therefrom:

"Now, therefore, if the said Lucy T. Brown shall perform the obligations of said deed as therein expressed and save the said Meserve harmless, then this obligation shall be void; otherwise it shall remain in full force and virtue only to the extent, however, that said Meserve suffers harm."

It is conceded that in the fall of 1877 default was made in the payment of the interest upon the Boston property, and that thereupon the Episcopal city mission entered into possession thereof and continued in such possession for several years, collecting and retain-

ing the rents, and in the spring of 1884 they proceeded to foreclose the said mortgages and sell the mortgaged property, the result of which foreclosure and sale was to leave a deficiency on lot 3 of $10,574.71 and on lot 4 of $10,074.71, which is the deficiency now sought to be recovered.

It is also conceded that Meserve made default in the payment of the indebtedness secured upon the *the* Chicago property, and
346 that Brown was compelled to pay and settle the same. The proof also shows, without dispute, that Mrs. Brown was not consulted in regard to having the deed of the Boston property made to her, and that she never consented to the taking of said deed nor to the assumption of the said mortgage indebtedness; that in fact while she was informed soon after the deeds were made that they ran to her instead of her husband, she was not informed that the deeds contained any assumption of the mortgages in question until about the time this suit was commenced in December, 1886, and upon these facts the counsel for the Episcopal city mission concedes that no case for a recovery is made against Mrs. Brown, a view in which I fully concur.

The complainant The Episcopal City Mission, however, claims, first, to hold Brown liable for the full amount of this deficiency, because he fraudulently used the name of his wife as grantee in these two deeds without authority and thereby made himself personally responsible for the amount of the indebtedness which he without authority caused Mrs. Brown to assume; second, that if not liable for the full amount of such deficiencies, he is liable to the full amount of the guaranty bond which Meserve has transferred to the complainant The Episcopal City Mission. The proof in the case clearly shows that while in the inception of the transaction it was agreed that the conveyance by Meserve of the Boston property was to be made to Brown, yet, when the deeds came to be exchanged between the parties, Brown requested that the deed be made to Mrs. Brown, and Meserve acceded to this request upon Brown's
347 giving him the indemnity bond which I have quoted. The reason for giving this bond is given by Mr. Brown in his testimony in substance as follows: "By the contract I had agreed to assume the mortgages upon these stores to the amount of $19,500 each, and the objection was made that if the property was deeded to Mrs. Brown I should not be carrying out my contract, and therefore he required the bond.

"I recognized the claim and agreed to give my bond to meet that responsibility. We agreed upon five thousand dollars at first, but later Mr. Meserve raised the question that, as this bond was to stand in lieu of the obligation in the deed, it should be for $10,000. This was agreed to, and a bond for that amount was given. The deeds were delivered at the time I delivered the bond. I delivered Mr. Meserve my deed of the Chicago property and my bond for $10,000 and received from him the two deeds of the Purchase St. stores at the same time."

(Page 41, printed Record.)

And Meserve, in his testimony, says (page 60, Record):

"The reasons or circumstances leading to the making of the bond were to hold me harmless against possible loss on those notes.

"The facts and circumstances which led to the fixing of the amount of the bond were to make Mr. Brown's liability equal to my own. I had assumed about $10,000 in Chicago. My feeling was that he had assumed 39,000 there and there could not possibly be a loss to that extent, if any. I did not feel that there would be. I recollect it now as a sort of balance between us in our liabilities. I knew my mortgages to be well-secured mercantile property that could not depreciate to any great extent. His were secured by
348 vacant lots. I took a bond because I was deeding to a straw grantee, somebody that I did not know. I did not mean to make the bond the whole amount of the difference, because I knew there could be no possible way of making my security worthless in three years."

This testimony, together with other quotations which might be made from the record, shows, I think, conclusively that Meserve consented to the substitution of Mrs. Brown as grantee in his deed of the Boston property without any regard to her responsibility upon the assumption clauses in the deeds, relying wholly upon the indemnity bond of Mr. Brown to secure him against loss as the mortgagor of the Boston property. I do not mean by this that Mrs. Brown would have been wholly released from liability on these assumption clauses if she had been a consenting party thereto, but that Meserve looked only to Brown's bond for his indemnity and made no question either as to Mrs. Brown's solvency or as to whether she knew anything about the deed to her and its obligations or not, and that taking the bond by Meserve shows that he was not imposed upon. There is no proof that there was any fraud or false statement made by Brown to Meserve to induce him to make the deeds to Mrs. Brown, no statement to the effect that Mrs. Brown had consented to take the title and assume the mortgage indebtedness or that he, as her agent, had authority to bind her in an way in the assumption of the mortgage indebtedness. Meserve only insisted upon the $10,000 individual bond of Brown to protect him against the mortgages he had given the Episcopal city mission and which, by the terms of the deeds, Mrs. Brown had assumed.
349 Meserve was not imposed upon by any statement, express or implied, that Mrs. Brown was or was not a consenting party to the transaction, but Meserve, upon Brown's agreeing to give the bond, consented to the substitution of Mrs. Brown as the grantee, relying solely upon Brown's bond, knowing, as he says in his testimony, that he was deeding the property to a "straw grantee." I see no reason why these parties had not an unquestionable right to make this substitution, and if Meserve consented to it it is binding on him and all claiming under him.

This being, in my estimation, a clear case of substitution by consent, with no question on the part of Meserve of Brown's right to ask such substitution, I do not think that any such case of imposition upon Meserve is made out as entitles the complainant or Me-

serve to invoke the principle that where an agent pretends to act for a principal without authority, even without fraud, he is himself liable as principal, as there is no proof that Brown pretended to have any authority to act for Mrs. Brown in the matter.

The proof shows and it is conceded that before the commencement of this suit Meserve had transferred the indemnity bond given him by Brown to the Episcopal city mission and fully consented that the mission might enforce whatever rights he, Meserve, had as against Brown. No question, therefore, arises in the case as to the right of the Episcopal city mission to enforce by this suit whatever rights Meserve had under the bond as against Brown.

350 Copious citations of authorities in regard to the right of a mortgagee to enforce an agreement on the part of the grantee of a mortgagor to pay the mortgage debt have been made; but I think all the questions that arise in this case are substantially settled in the late case of Keller *v.* Ashford, reported in 133 U. S., 610. It is there decided in substance that the mortgagee may avail himself of any undertakings made with the mortgagor for the payment of the mortgage indebtedness to the extent that the mortgagor might enforce such undertaking.

Applying this rule to this case, then the question is, What rights could Meserve have enforced against John B. Brown upon this bond?

It is admitted that the transaction between Meserve and Brown was in effect an exchange of property, in which each party assumed to pay certain debts or obligations of the other; and it is also admitted that Meserve made default in his undertaking, and that Brown was compelled to pay and settle and has paid and settled the incumbrances upon the Chicago property which Meserve assumed to pay. It is equally clear that Brown would be entitled in an action by Meserve against him upon this bond to set off any payments which he had been compelled to make upon the incumbrances on this Chicago property which Meserve assumed and has failed to pay and which Brown has since paid or remains liable therefor.

The proof shows that Brown's payment in cash or what was accepted as cash from him upon the incumbrances on this Chicago property amount, with interest, to $9,122.63. It is true that

351 Brown testifies that, while some of this indebtedness which Meserve assumed still remains uncancelled, yet he has made such arrangements with the holders by agreements for the payment of other indebtedness that he expects these debts so assumed by Meserve will all be cancelled, so that Meserve will be relieved from payment. This, in my opinion, fully cancels by right of recoupment all claims Meserve would have against Brown on the bond, and hence cancels all claims of the complainant therein.

It is urged that Brown paid some portion of this indebtedness with stocks and bonds, and that the complainant has the right to inquire into the value of those stocks and bonds.

I do not think this position in any sense tenable. The defendant,

John B. Brown, had the right to settle with his creditors in any way that he saw fit and pay them either in property or money, so long as he retired and liquidated his indebtedness.

I do not, therefore, see that Meserve would have any right of recovery against Brown upon this bond, as by the express terms of the bond he is only to be liable to the extent that Brown sustains harm, and, so far as the proof shows, Meserve has sustained no harm, as he has not paid a penny on the mortgage indebtedness which Mrs. Brown assumed, and, if he has no right, certainly the Episcopal city mission, in whose behalf this suit is prosecuted, can have no such right. The bill is therefore dismissed for want of equity.

(Endorsed:) Filed July 31st, 1890. Wm. H. Bradley, clerk.

352 On the same day, to wit, on the thirty-first day of July, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

The court having considered and being now fully advised upon the matters submitted on the hearing herein finds the issues for the defendants. It is thereupon ordered that the bill herein be dismissed for want of equity at complainants' costs, and that execution issue therefor.

353 Afterward, to wit, on the twenty-ninth day of June, in the adjourned May term of said court, 1891, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE
vs.
LUCY T. BROWN and JOHN B. BROWN. } In Chancery.

On this day come the complainants and pray an appeal to the next term of the Supreme Court of the United States, which is allowed upon complainants filing bonds herein within twenty-five days from this date in the penal sum of five hundred (500) dollars.

On the same day, to wit, on the twenty-ninth day of June, 1891, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

354 *Appeal Bond.*

Know all men by these presents that we, The Episcopal City Mission and George W. Meserve, as principals, and George Burry and William Burry, as sureties, are held and firmly bound unto Lucy T. Brown and John B. Brown in the full and just sum of five hundred dollars, to be paid to the said Lucy T. Brown and John B. Brown, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a session of the circuit court of the northern division of the northern district of Illinois, in a suit depending in said court between The Episcopal City Mission and George W. Meserve, complainants, and Lucy T. Brown and John B. Brown, defendants, a final decree was rendered against the said Episcopal City Mission and George W. Meserve, and the said Episcopal City Mission and George W. Meserve having obtained the allowance of an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Lucy T. Brown and John B. Brown, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Episcopal City Mission and George W. Meserve shall prosecute said appeal to effect and answer all damages and costs if they fail
355 to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE EPISCOPAL CITY MISSION, [SEAL.]
By GEORCE BURRY, *Its Attorney.*
GEORGE W. MESERVE, [SEAL.]
By GEORGE BURRY, *His Attorney.*
GEORGE BURRY. [SEAL.]
WM. BURRY. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved by—

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed June 29, 1891. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-ninth day of June, 1891, came the complainants, by their solicitor, and filed in said clerk's office their assignment of errors in said entitled cause; which said assignment of errors *are* in the words and figures following, to wit:

356 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE EPISCOPAL CITY MISSION and GEORGE W. MESERVE
vs.
LUCY T. BROWN and JOHN D. BROWN.
} 20387. 774.

And now come the said complainants, The Episcopal City Mission and George W. Meserve, and hereby respectfully pray for an appeal from the final decree in this cause to the Supreme Court of the United States for the reason set forth in the following assignment of errors.

GEORGE BURRY,
Solicitor for Complainants.

Assignment of Errors.

First. The court erred in dismissing this cause for want of equity.

Second. The court erred in holding that the complainant Meserve agreed that the deeds should be made to Lucy T. Brown without any agreement by her to assume and pay the incumbrances on the lands described in the deeds to her.

Third. The court erred in holding that Meserve agreed that the deeds should be made to Lucy T. Brown without any agreement on her part to assume and pay the incumbrances on the lands described in the deeds to her on John B. Brown's executing a bond condition that Lucy T. Brown should perform the obligations
357 of said deeds as therein expressed, and at the same time holding that Lucy T. Brown never assumed any obligations expressed in the said deeds.

Fourth. The court erred in holding that Meserve agreed to rely wholly on the bond of John B. Brown that Lucy T. Brown would perform the obligations of the deeds to her as therein expressed, and at the same time agreed that the said deeds should impose no obligations on Lucy T. Brown.

Fifth. The court erred in holding that there was no fraud in John B. Brown's procuring the deeds to be made to Lucy T. Brown under the circumstances appearing in the evidence.

Sixth. The court erred in holding that John B. Brown in pretending to act for Lucy T. Brown, while he had no authority to do so and knew he had no authority to do so, was not guilty of fraud.

Seventh. The court erred in holding that John B. Brown in pretending to act for Lucy T. Brown, while he had no authority to do so and knew he had no authority to do so, did not bind himself or his pretended principal.

Eighth. The court erred in not holding that John B. Brown was bound by the assumptions or the agreements of either of the deeds to Lucy T. Brown.

Ninth. The court erred in not holding that John B. Brown was liable on the contract under which, as a part performance thereof, the deeds were made to Lucy T. Brown.

Tenth. The court erred in not holding that John B. Brown was the principal debtor and primarily liable to pay to the appellant The Episcopal City Mission the moneys secured to it by the mortgages mentioned in the pleadings.

358 Eleventh. The court erred in holding that the appellants had no rights to inquire into the value of the stocks and bonds given by John B. Brown in settlement of parts of the indebtedness assumed by Meserve.

Twelfth. The court erred in not holding that John B. Brown was entitled to mere indemnity for such payments in stocks and bonds as he made on the indebtedness assumed by Meserve.

Thirteenth. The court erred in holding that John B. Brown was not liable for the difference between the amount due on the mortgages to the Episcopal city mission and the value of what was paid by him in settlement of the indebtedness assumed by Meserve.

Fourteenth. The court erred in not holding that John B. Brown was liable for the difference between the amount due on the mortgages to the Episcopal city mission and such credits as he may be entitled to on account of the payments made by him on the indebtedness assumed by Meserve.

Fifteenth. The court erred in holding that John B. Brown paid and settled the incumbrances assumed by Meserve on Chicago property.

Sixteenth. The court erred in holding that the only liability of John B. Brown was according to the bond given by him to Meserve.

Seventeenth. The court erred in holding that no recovery could be had according to the said bond, because Meserve had paid nothing on the mortgage indebtedness mentioned in the deeds to Lucy T. Brown.

Eighteenth. The court erred in holding that no recovery could be had by the Episcopal city mission or by Meserve, because Meserve had paid nothing on the mortgage indebtedness assumed by Lucy T. Brown, and at the same — holding that Lucy T. Brown assumed no indebtedness.

359 Nineteenth. The court erred in not holding that Meserve was entitled to a decree compelling John B. Brown to pay to the Episcopal city mission such amount as on an accounting should be found due from him and to so relieve Meserve in whole or in part from liability to the Episcopal city mission.

Twentieth. The court also erred in other matters appearing of record.

(Endorsed:) Filed June 29, 1891. Wm. H. Bradley, clerk.

360 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that the above and foregoing is a true and correct transcript of the record of all the proceedings had in said court in the cause wherein The Episcopal City Mission and George W. Meserve are complainants and Lucy T. Brown and John B. Brown are defendants as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this sixteenth day of July, 1891.

WM. H. BRADLEY, *Clerk.*

361 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Lucy T. Brown and John B. Brown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the fourth Monday of July, A. D. 1891, pursuant to an appeal prayed and allowed from a decree entered in the circuit court of the United States for the northern district of Illinois, wherein The Episcopal City Mission and George W. Meserve are complainants and you are defendants, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

H. W. BLODGETT, *Judge.*

362 [Endorsed:] 189. Supreme Court of the United States. Episcopal City Mission *et al. vs.* Lucy T. Brown *et al.* Citation to 4th Monday July, A. D. 1891. Served on Lucy T. Brown and John B. Brown June 29. $5.00.

I served the within citation upon Lucy T. Brown and John B. Brown, therein named, by reading the same to them and in their presence and hearing, and also by delivering to each of them a true copy thereof, on the 29th day of June, A. D. 1891.

FRANK HITCHCOCK,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

Marshal's Fees.

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Endorsed on cover: Case No. 14,779. N. Illinois C. C. U. S. No. 250. The Episcopal City Mission and George W. Meserve, appellants, *vs.* Lucy T. Brown and John B. Brown. Filed July 27, 1891.

SUPREME COURT OF

BRIEF FOR

(14,779.)

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1894.

No. 250.

EPISCOPAL CITY MISSION and GEORGE W. MESERVE, Appellants,

vs.

LUCY T. BROWN and JOHN B. BROWN, Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

STATEMENT.

This suit is brought by the appellants, both of Boston, Massachusetts, to recover deficiencies on two mortgages given by Meserve to the Mission and assumed by Mr. Brown. Whether Brown was subsequently relieved from that assumption is the principal question. The most material facts are undisputed.

Meserve and John B. Brown made a contract in *January*, 1877, by which Meserve sold and agreed to convey to John Brown lots 3 and 4 on Purchase street in Boston, each lot to be subject to an incumbrance of $19,500, which incumbrances John Brown agreed to assume and pay, and by the same contract Brown also sold and conveyed to Meserve certain lots in and near Chicago, subject to four incumbrances aggregating about $10,000 (Rec., 38, 39, 341), which incumbrances Meserve agreed

to assume and pay (Rec., 326–327, 341, 217). When three months later in *March* Brown and Meserve were ready to carry out this contract, Brown proposed a change in the contract (Rec., 218–219). He asked Meserve to make the deeds of the Boston stores to Lucy T. Brown, his wife. Meserve hesitated and objected (Rec., 218, 303–305), but finally signed a separate deed for each lot, to Lucy T. Brown, and delivered them to John Brown, who accepted them for her (Rec., 219). Each of these deeds contained this clause (Rec., 87, 113–114):

"Subject to a mortgage on said store for nineteen thousand five hundred ($19,500) dollars made by me to said Episcopal city mission which mortgage with all interest thereon, the said Lucy T. Brown hereby assumes and agrees to pay, and to protect and save harmless said grantor therefrom."

John Brown, thereupon, besides a deed to the Chicago lots, executed to Meserve a penal bond for $10,000 conditioned as follows (Rec., 21–22):

"The condition of the obligation is such, that whereas, the said George W. Meserve did by deeds dated March 1, 1877, convey unto Lucy T. Brown two separate estates on Purchase street, Boston, Mass., each estate being subject to a mortgage of $19,500 at 6½ per cent. interest to the Episcopal city mission, of even date with said deeds, which said mortgages and interest thereon, the said Lucy T. Brown assumed and agreed to pay and hold the said Meserve harmless therefrom. Now, therefore, if the said Lucy T. Brown shall perform the obligations of said deeds as therein expressed and save the said Meserve harmless, then this obligation shall be void, otherwise, it shall be and remain in full force and virtue, only to the extent, however, that the said Meserve suffers harm."

Under these deeds Brown took possession of the Boston stores, collected the rents, made some improvements (Rec., 171), and paid some interest on the mortgages (Rec., 176), until the mission about the middle of March,

1878, because of default, took possession under the mortgages (Rec., 200, 171), and under these deeds Brown in his answer claims title. (Rec., 339, 340.) Mrs. Brown appears as grantee in the deeds solely because Brown asked that the deeds be made to her. Brown had no authority to act for Mrs. Brown, and she never had any interest in the property. (Rec., 220, 221, 231, 232, 321, 322.) She was a dry trustee for Brown. If she had accepted the trust the legal title would have vested immediately in Brown, and her duties would have been the usual few and simple duties of such a trustee, with the added obligation to Meserve arising out of her assumptions in the deeds, and Brown would have been the legal and equitable owner of the lots, and his rights and duties to his trustee would also have been those usual in such cases, with the added obligation of paying the indebtedness assumed for his advantage, and so saving his trustee harmless from the liabilities which she had at his request undertaken in connection with the trust. As between Brown and his trustee, Brown would have been primarily liable for the indebtedness; she would have been only a surety, and he principal debtor and liable to the mortgagee in some form of action. Mrs. Brown, however, never accepted the trust. The probability is—there is no direct evidence—that the action of Mrs. Brown was determined by what Brown conceived to be his interest. She appears to have had no knowledge of the assumption of the mortgages until this suit was brought. (Rec., 321, 322.) There was no disclaimer by her until she filed her answer in this case, and had the property proved to be worth more than the incumbrances she probably never would have disclaimed. It is hardly necessary to ask what motives cause a man

to convey his property to another while he at the same time retains all beneficial interest therein for himself. The answer could not change the fact, indisputable on the evidence, that Mrs. Brown never accepted the trust. Though there is no direct evidence that Meserve at the time knew what now appears from the evidence, that Mrs. Brown was merely a trustee for Brown, yet from their respective legal relations to the property these questions arise: Shall the trust fail for want of a trustee? and shall Brown, for want of a trustee or by the trustee's refusal to act, be released from his liability as principal to pay the indebtedness assumed for his advantage by the trustee?

The change in the January contract, suggested in March by Brown and acquiesced in by Meserve (called for convenience the March contract), comprised four things: (1) the making of the deeds to Mrs. Brown instead of to Mr. Brown; (2) the substitution of Mrs. Brown for Mr. Brown as principal debtor for the $39,000; (3) the consent of Mrs. Brown and (4) the giving of the bond by Brown. These four elements, it is claimed by appellants, constitute one proposition or contract in its nature entire. Brown did did not propose and Meserve did not assent to a change which did not include every one of the four elements. The deeds made by Meserve and the bond made by Brown (Rec., 12, 19, 21) leave no room to question that it was the intention of both Brown and Meserve that Mrs. Brown was to be substituted as debtor for the $39,000, and the nature of the transaction made it necessary that Mrs. Brown should consent to the arrangement. This March contract never went into effect, because Mrs. Brown refused to ratify what Mr. Brown had done in her name, refused to accept the deeds made by

Meserve to her, and refused to consent to the novation by which she was to be substituted for Brown as debtor for the $39,000. Appellants claim that this court cannot consistently be asked to hold that this novation was made and by it Mr. Brown released from the $39,000, and at the same time to hold that this novation was never made, and therefore Mrs. Brown is not bound for the $39,000. These questions, therefore, arise: Is this proposed change in its nature entire? Did this March contract ever get into effect, it from its nature requiring the assent of Mrs. Brown and she having refused her assent? If Mrs. Brown is not bound for the $39,000, is Mr. Brown released therefrom? Can Brown set up to defeat his liability on the January contract this March contract which fell through because Mrs. Brown repudiated acts done by him in her name at a time when he knew he had no authority to act for her? If the change in the January contract never was effected, of course the bond is a nullity, because it is only one part of an entire contract which was never concluded.

Meserve's making the deeds to Mrs. Brown is satisfactory evidence that at the time he made them he did not know either that Brown had no authority to bind his wife or that she would not accept the deeds. There is no evidence that Brown's authority to act as agent for his wife was questioned. Meserve hesitated and objected, not because he doubted Brown's authority to act for his wife, but because his contract was with Brown, whom he considered good (Rec., 315, 305), and not with Mrs. Brown, whom he had never seen and about whom he knew nothing. (Rec., 218, 302.) This objection of Meserve, that he would be deeding to a "straw grantee," "to somebody that I did not know" (Rec.,

305) was obviated by Brown's giving the bond. Brown asked that the deeds be made to his wife; it was done, and he accepted the deeds for her. Considering, then, Mrs. Brown as Meserve's grantee, for as such he regarded her at the time he made the deeds to her (Rec., 315), then in asking that the deeds be made to her and in accepting them for her Brown acted, or pretended to act, as her agent. His assuming to act for her was virtually a representation that he had the right to do so. Since the disclaimer, it is not pretended by the appellees that Brown even supposed he had any authority from Mrs. Brown to act as her agent. (Rec., 221, 231, 336, 338, 339.) Brown was asked (Rec., 221), "Had you any authority, written or otherwise, or any communication with her in reference to the making of these deeds to her at that time?" He answered, "I had not, nor had it ever come to my mind to have them made to her until we sat down to draw up the papers; never had been discussed nor thought of by me." In this view another question arises: Did Brown bind himself in any way by pretending to be the agent for and to bind Mrs. Brown, when he knew he had no authority to do so?

If Brown is liable for the $39,000 (1) because the attempted change in the January contract was never carried out, (2) as the beneficial grantee in the deeds to Mrs. Brown, or (3) because he made himself liable by pretending to act for and to bind Mrs. Brown when he knew he had no authority to do so, then the rights of Meserve and of Brown are substantially the same as if the deeds had been made to Brown directly in pursuance of the January contract.

The mortgages on the Boston property were foreclosed

by the Mission March 12, 1884. On lot 3 there was a deficiency of $10,574.71 (Rec., 100), and on lot 4 a deficiency of $10,074.71 (Rec., 128), together $20,589.42. These are the deficiencies for which it is claimed Brown is liable. Through Meserve's default Brown was forced to take care of some of the indebtedness secured by the four mortgages assumed by Meserve. If Brown is liable as principal debtor for the deficiencies on Boston mortgages it is not disputed that he has the right to recoup under the January contract any payments he may have made on the mortgages assumed by Meserve. There are some questions, however, as to the principles which govern in ascertaining the amount to be recouped. Some of the payments by Brown on these incumbrances were made in stock, some in bonds and some in cash. (Rec., 238–251.) It is admitted by the appellants that as to those incumbrances which Meserve assumed, he is the principal debtor, and Brown only his surety. The surety having compromised the debt, the question arises whether the surety can legally claim from his principal anything more than indemnity which, in this case, is the cash paid, the value in cash of the stocks and bonds, and interest. Appellees claim that the surety may charge his principal with the par value of the stocks and bonds given to settle the indebtedness. There was no attempt to fix the exact value of these stocks and bonds; that will come properly before the master on the accounting after the basis of the accounting is determined.

The interest to be allowed gives rise to another question: The Boston mortgages bear interest at six and one-half per cent. per annum, payable semi-annually, and they matured March 1, 1880. The first of the Chicago mort-

gages bears interest at the rate of ten per cent. per annum, and matured April 18, 1879 (Rec., 38, 39); the second bears interest at the rate of ten per cent. per annum, and matured April 1, 1877; the third bears interest at the rate of eight per cent. per annum, and matured July 26, 1878; the fourth bears interest at the rate of eight per cent. per annum, and matured July 26, 1878. The payments by Brown were made principally on the second mortgage, which bears interest at ten per cent. (Rec., 279.) Brown claims he is entitled to interest on these payments at the rate of ten per cent. per annum until the date of the decree, notwithstanding he is indebted in a much larger amount, which matured March, 1880, and bears interest at only six and one-half per cent., and against which he seeks to offset his payments. The Mission, on the other hand, claims that where there are mutual credits these are to be considered as offset at the times they become due respectively.

On this recoupment another question may arise from the way in which the third incumbrance (Rec., 39) assumed by Meserve was discharged. It is not clear whether Brown insists on the right to recoup this item. It is not included in the statement of offsets claimed by him (Rec., 279), nor on cross-examination would he say whether he made any claim under that incumbrance (Rec., 251); but evidence was introduced to sustain it. The note and trust deed were originally given for purchase money (Rec., 261) by Wetherell and Newell, and were afterwards assumed by Brown (Rec., 280). Nothing was ever paid on this note by Brown (Rec., 252) or by any other person so far as appears (Rec., 253). It was finally compromised, and the mortgage satisfied by a reconveyance of the property (Rec., 151, 152, 193).

This reconveyance was made by Newell and Meserve in 1881, and was brought about in this way: Brown and Newell appear to have had several transactions together (Rec., 251). In these transactions Brown appears to heve been interested in the profits and losses (Rec., 258, 250–259). Brown says (Rec., 253):

"There were quite a number of notes made by Newell, secured on different pieces of property that I was endorser on. Suits were brought against me on some of them, and he came out here —he lived in New York—and made the proposition that he would take care of sundry notes if I would others. We made that agreement, and he did take care of the notes that he had agreed to, at least I never heard anything of them afterwards; this Wetherell note being the note that he agreed to take care of; said he could make a settlement with them; he would take care of it so it should not trouble me, and I agreed to take care of what was known as the Abbott notes."

It now here appears that Brown on this settlement agreed to take care of more than his share or even of his full share of the joint indebtedness, or that Brown, because of this agreement paid a dollar more of the joint indebtedness than he would have otherwise been obliged to pay. It does appear that the Abbott notes which Brown agreed to take care of amounted, without interest, to only $2,000 (Rec., 258, 259), and that the Wetherell notes which Newell agreed to take care of amounted, without interest, to $3,200 (Rec., 39, 40); but it also appears that Newell said to Brown, "he could make a settlement with them; he would take care of it so it should not trouble me," (Rec., 254), and, therefore, that Brown knew Newell expected to compromise the indebtedness. It was claimed by the appellees that Meserve is liable for the Abbott notes, the indebtedness thus apportioned to Brown, because he was liable for the indebtedness apportioned to Newell, and that too, not-

withstanding, Meserve afterwards paid the indebtedness apportioned to Newell by the reconveyance. This agreement was not made by Brown for the benefit of Meserve; it only releases Brown from his assumption of the incumbrance; by it Newell does not undertake to pay the Wetherell notes, or to do anything which would benefit Meserve. The whole agreement is simply a division between partners of some of their joint liabilities, and presumably was made by them according to their equities. Moreover, if any person were entitled to subrogation as against Meserve, it is not clear that Newell would not be that person. The agreement recites that Meserve has wholly failed to pay the incumbrance, and that Brown is bound therefor. In the reconveyance which satisfied this incumbrance in 1881, Newell had joined with Meserve. Newell, at least, therefore, knew that the recital in the agreement was not according to the facts. It is also hardly credible, unless we assume some ulterior motive, that Newell did not at the time that agreement was put in writing inform Brown that the Wetherell notes had been satisfied more than three years before (Rec., 193), though Brown repeatedly says (Rec., 252–254) he knew nothing about the notes after 1878. The agreement, it is claimed, was made in 1878 (Rec., 257, 260); but as reduced to writing, it bears date June 19, 1884 (Rec., 282), which was after the Boston mortgages had been foreclosed (March 12, 1884), and after the deficiencies had been thus ascertained. It is not explained why this agreement rested so long in parol, and was then put in writing. At the time it is dated, each party to the agreement had performed his part (Rec., 193–4, 252), and it was at least unnecessary, so far as appears, to give the agreement the form it has (Rec., 280–282), except for use

in this suit. Approximately, Brown has paid on the indebtedness assumed by Meserve of principal on No. 2 $3,645.70, the full amount (Rec., 39, 248), on No. 4, $380 (Rec., 39), total $4,025.70; of interest on No. 1, two coupons $500 (Rec., 238), and on No. 2, interest till August 15, 1878 (Rec., 249), about $1,200; or principal and interest altogether about $5,500, partly in stock and bonds.

An objection to the validity of the foreclosures by the Mission was made by Brown in an amendment to his original answer. (Rec., 47–50.) He alleged that these foreclosures were made in violation of an express trust and he sustained these allegations by his testimony (Rec., 207, 232–236) and some letters (Deft's. Exs. 2, 5, 6, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21.) Opposed to this were the testimony of Blatchford (Rec., 147–149), and Paine (Rec., 141, 142) and some letters (Complts. Exs. 5, 6, 7, 8, 16, 9, 10, 11, 14, 12 and 18). This opposing testimony was conclusive, and this point seems from the answer to the amended bill to have been abandoned. It was not urged on the hearing.

Another objection made by Brown to the foreclosure is, that the mortgagee became the purchaser and made conveyances of the lots to itself. The mortgages (Rec., 8, 15) provide that on default the grantee may sell at public auction, and may convey by proper deed to the purchaser absolutely, and in fee simple, and that the grantee may purchase at any sale made as aforesaid. The manner in which these powers were executed appears from the mortgagee's deeds. (Rec., 90, 118.) Each of these is made by the Mission and by Meserve by the Mission as his attorney. These mortgagee's deeds it is insisted, are good, and on the trial this was not very strongly opposed.

Still another objection to the foreclosure by sale is, that after they are made the Mission not being satisfied with the titles thereby acquired, proceeded under the statute of Massachusetts to foreclose by entry "and thereby became bound to account for the full value of the said property." There was no conflicting evidence. The facts appear from the certificates of entry. (Rec., 102, 130.) Each certificate contains this clause: declaring at the same time and place that said entry was made, not waiving the benefit of the foreclosure sale already made under the power in the said mortgage, but to confirm the same." This point, also, was not much urged at the trial.

If Brown is not liable for the $39,000 under the unchanged January contract, or as the beneficial grantee in the deeds to Mrs. Brown, or because he made himself liable by pretending to act for and to bind Mrs. Brown, when he knew he had no authority to do so, then other questions arise. In this, Brown's, view of the case, the bond is an important element, and on the construction of it the right of the Mission to recover depends.

Meserve never paid anything on his mortgages to the Mission. (Rec. 306.) This being admitted Brown insists there can be no recovery on the bond because, as he claims, there has been no breach of the condition. The meaning of the condition of the bond is therefore a question in the case. The condition of the bond is "if the said Lucy T. Brown shall perform the obligations of said deeds as therein expressed and save the said Meserve harmless, then this obligation shall be void, otherwise it shall be and remain in full force and virtue, only to the extent, however, that the said Meserve suffers harm." The obligations of each deed as therein expressed are which mortgage with all the interest thereon the said

Lucy T. Brown hereby assumes and agrees to pay, and to save and protect harmless said grantor therefrom." There is a recognized difference between an agreement to pay A's debt and an agreement to indemnify A against that debt. The agreement to pay is broken as soon as the debt is overdue, and a right of action thereon accrues immediately. If the obligation of the deeds be incorporated in the condition of the bond it becomes: if Lucy T. Brown shall (1) pay the mortgages and (2) save Meserve harmless therefrom, then this obligation shall be void, otherwise it shall remain in full force, "*only to the "extent, however, that the said Meserve suffers harm.*" Brown claims that the addition of the words in italics nullifies the agreement to pay the mortgages and converts the bond into a bond for indemnity merely. On the other hand the appellants claim that the whole clause in italics is mere surplusage; that it does not change the legal effect of the bond; that on any penal bond a recovery can be had only to the extent the obligee suffers harm. That the word "harm" in the clause in italics is to be construed in connection with the provision for the payment of the mortgages and so as not to nullify that provision if it can be otherwise reasonably construed; that "harm" is a general word like injury, damage or detriment and broad enough to include liability for the mortgages, which is the legal injury or harm from which the agreement to pay the mortgages was intended to protect Meserve and from which in this suit he seeks protection; and that in this contract, as in others, such a meaning must be assigned to the general word as will accord with the intention of the parties. That the exception in the words in italics should not be given a meaning more comprehensive than

the provision from which it is an exception. If Brown were liable only on the bond and if appellees' construction of the bond were correct, still there would remain some questions as to set-off.

The amount of the bond is $10,000. Under the original contract the amount of the incumbrances to be assumed by Brown is $39,000, and by Meserve $10,000 or $11,000. (Rec., 217, 305, 38, 39.) "Meserve states that the reason for taking the bond was none other than that he, Brown, was responsible for the liability on the mortgage." (Rec., 302.) "It was to hold me against a possible loss on those notes." (Rec., 304.) Why the amount of the bond was fixed at only $10,000 is explained by Meserve alone. (Rec., 305.) Brown's mortgages were secured by vacant property. (Rec., 305.) Meserve's were secured by improved business property (Rec., 305) in one of the best business centers in Boston. (Rec., 308.) His buildings were insured and his lands had cost almost the amount of the incumbrances. (Rec., 305.) He "knew there could be no possible way of making 'his' security worthless by any handling it in three years." (Rec., 305.) He did not think there would be any loss. Though, as a matter of fact, the amount of the bond was not equal to the difference between the liabilities to be assumed by them respectively, yet he regarded the $10,000 as a safe *balance* between them in their liabilities? (Rec., 305.) It is clear that in fixing the amount of the bond it was the intention to set off $10,000 of the $39,000 to be assumed by Mrs. Brown against the $10,000 to be assumed by Meserve, and then to let the Boston property and Brown's bond stand against the remaining $29,000 to be assumed by Mrs. Brown. That is, the amount of the

incumbrance assumed by Meserve has been already allowed Brown as a set-off by reducing the amount of bond required from Brown.

The original bill was filed December 3, 1886. (Rec., 1.) It stated the facts as they appeared from the mortgages to the Mission, the deeds to Lucy Brown and the bond to John Brown. After the defendants had answered and put in their testimony, and the case had been argued, it appeared indisputably that John Brown had no authority, and knew he had no authority, to accept the deeds to Lucy Brown; that she never ratified the taking of the deeds in her name, and never had any interest in the property. (Rec., 220, 221, 231, 321, 322.) An amended bill was thereupon filed March 13, 1890, (Rec., 325), which set forth the making of the contract between Meserve and John Brown, the two mortgages, the two deeds to Lucy Brown, made at the request of John Brown, the bond by John Brown, the default in the payment of the mortgages, the foreclosures, the resulting deficiencies, Meserve's complete insolvency and demand on the Browns, and in the charging part the claims of the Browns. It concluded with an appropriate prayer. The amended answer of Lucy Brown, filed May 28, 1890 (Rec., 335), says that she had no knowledge of the making of the deeds to her by Meserve; never consented to the making thereof, and is in no way liable for the deficiencies on the mortgages. The amended answer of John Brown, filed the same day (Rec., 337), admits the making of the January contract, and says that at his request it was changed, and that Meserve agreed to, and did convey the lots to Lucy Brown, and agreed to accept the bond in place of his assumption on the mortgages. It denies that Meserve was

misled by any claim of authority to act for Lucy Brown; that he made any such claim; that he represented to Meserve that he was authorized to receive the deeds for her or to bind her for the covenants therein that in any way by false representations persuaded Meserve to change the contract. It avers that on the contrary Meserve knew that Lucy Brown was only a straw grantee and the conveyances to her solely for John Brown's use, and that he required as a condition to his consent to the change that Brown should give bond in such amount as Meserve thought ample to save him from loss through making the conveyances to Lucy Brown and giving up Brown's personal undertaking to pay the mortgages. That Meserve accepted the bond in the place of John Brown's former agreement to assume and pay the mortgages, and that thereby the original contract was changed and John Brown was released from any liability to pay said mortgages, and was bound solely upon his bond, which, it is alleged, is simply a bond of indemnity and to remain in force "only to the extent that said Meserve suffers harm." It admits the foreclosures and resulting deficiencies, but says that the Mission purchased at its own sale for less than the real values, which were greater than the mortgages. That the mission not being satisfied with the title under these foreclosures proceeded to foreclose by entry under the statute of Massachusetts, and thereby became bound to account for the full value of the property, which would fully pay the indebtedness to the mission. It admits that Meserve is wholly insolvent, and says that Meserve has never paid anything on said mortgage and has, therefore, never suffered any harm, and that, therefore, John Brown is not liable on his bond. It avers that Meserve failed to pay the mort-

gages on the Chicago lots which he assumed in the deed to him, and that John Brown was obliged to pay about $10,000 and is now entitled to offset the amount so paid against any liability on the bond or arising otherwise from this transaction. It avers that Brown is not liable on the original contract and not liable on the bond given in the place of the original contract, because the bond was for indemnity only and Meserve had not paid any money on the mortgages, and that the mission has no claim except through Meserve. It alleges that any claim against Brown under the original contract or because of his request to make the conveyances to Lucy Brown, is stale, and ought not to be recognized by a court of equity because the amended bill was filed thirteen years after the original contract and the changes therein were made, and almost four years after the original contract and the changes therein were set forth in the original answer. That Meserve could not now assert any such claim in an action at law, and the mission should not be allowed to do so in this court.

To the point that the claim set up in the amended bill is stale, the facts as they appear are the answer. The limitation on written contracts is ten years. The contract was in writing (Rec. 215, 216). The cause of action accrued March 12, 1884. The original bill was filed December 3, 1886. The amended bill was filed May 13, 1890. The amended bill was necessary only because of Brown's acting for Mrs. Brown when he knew he had no authority to act for her, which fraud was first known to the appellants when the Browns gave their evidence in 1888, only about two years before the amended bill was filed. No evidence on this point was introduced by either party. The amendments were made after the hearing.

to make the pleadings correspond with the evidence, and evidence on that point was then unnecessary because of the intimations of the court. The point was not argued before or noticed by the Circuit court.

ASSIGNMENT OF ERRORS.

First. The court erred in dismissing this cause for want of equity.

Second. The court erred in holding that the complainant Meserve agreed that the deeds should be made to Lucy T. Brown without any agreement by her to assume and pay the incumbrances on the lands described in the deeds to her.

Third. The court erred in holding that Meserve agreed that the deeds should be made to Lucy T. Brown without any agreement on her part to assume and pay the incumbrances on the lands described in the deeds to her on John B. Brown's executing a bond condition that Lucy T. Brown should perform the obligations of said deeds as therein expressed, and at the same time holding that Lucy T. Brown never assumed any obligations expressed in the said deeds.

Fourth. The court erred in holding that Meserve agreed to rely wholly on the bond of John B. Brown that Lucy T. Brown would perform the obligations of the deeds to her as therein expressed, and at the same time agreed that the said deeds should impose no obligations on Lucy T. Brown.

Fifth. The court erred in holding that there was no fraud in John B. Brown's procuring the deeds to be made

to Lucy T. Brown under the circumstances appearing in the evidence.

Sixth. The court erred in holding that John B. Brown, in pretending to act for Lucy T. Brown, while he had no authority to do so, and knew he had no autherity to do so, was not guilty of fraud.

Seventh. The court erred in holding that John B. Brown, in pretending to act for Lucy T. Brown, while he had no authority to do so, and knew he had no authority to do so, did not bind himself or his pretended principal.

Eighth. The court erred in not holding that John B. Brown was bound by the assumptions or the agreements of either of the deeds to Lucy T. Brown.

Ninth. The court erred in not holding that John B. Brown was liable on the contract under which, as a part performance thereof, the deeds were made to Lucy T. Brown.

Tenth. The court erred in not holding that John B. Brown was the principal debtor, and primarily liable to pay to the appellant, The Episcopal City Mission, the moneys secured to it by the mortgages mentioned in the pleadings.

Eleventh. The court erred in holding that the appellants had no right to inquire into the value of the stocks and bonds given by John B. Brown in settlement of parts of the indebtedness assumed by Meserve.

Twelfth. The court erred in not holding that John B. Brown was entitled to more indemnity for such payments in stocks and bonds as he made on the indebtedness assumed by Meserve.

Thirteenth. The court erred in holding that John B. Brown was not liable for the difference between the amount due on the mortgages to the Episcopal City Mission, and the value of what was paid by him in settlement of the indebtedness assumed by Meserve.

Fourteenth. The court erred in not holding that John B. Brown was liable for the difference between the amount due on the mortgages to the Episcopal City Mission and such credits as he may be entitled to on account of the payments made by him on the indebtedness assumed by Meserve.

Fifteenth. The court erred in holding that John B. Brown paid and settled the incumbrances assumed by Meserve on Chicago property.

Sixteenth. The court erred in holding that the only iability of John B. Brown was according to the bond given by him to Meserve.

Seventeenth. The court erred in holding that no recovery could be had according to said bond, because Meserve had paid nothing on the mortgage indebtedness mentioned in the deeds, to Lucy T. Brown.

Eighteenth. The court erred in holding that no recovery could be had by the Episcopal City Mission or by Meserve, because Meserve had paid nothing on the mortgage indebtedness assumed by Lucy T. Brown, and at the same time holding that Lucy T. Brown assumed no indebtedness.

Nineteenth. The court erred in not holding that Meserve was entitled to a decree compelling John B. Brown to pay to the Episcopal City Mission, such amount as on an accounting should be found due from him, and to so relieve Meserve, in whole or in part, from liability to the Episcopal City Mission.

Twentieth. The court also erred in other matters appearing of record.

POINTS.

I.

Under the January contract by which Meserve sells the mortgaged property to Brown and Brown agrees to pay the mortgages, Brown is liable for the mortgages as principal debtor and Meserve is liable only as surety.

Keller v. *Ashford*, 133 U. S., 610.

II.

In such a case in a Federal court the mortgagee is entitled in equity to enforce against the grantee the agreement to pay the mortgage.

Keller v. *Ashford*, 133 U. S., 610.
Willard v. *Wood*, 135 U. S., 309.

III.

This relief is based, not on any privity of contract, but on "the ancient and familiar doctrine in equity that a creditor shall have the benefit of any obligation or security given by the principal to the surety for the payment of the debt."

Keller v. *Ashford*, 133 U. S., 610.
Hampton v. *Phipps*, 108 U. S., 260.

In *Hampton* v. *Phipps*, of this relief, it is said:

"Many sufficient maxims of thelaw conspire to justify the rule. To avoid circuity and multiplicity of actions; to prevent the exercise of one's right from interfering with the rights of others; to treat that as done which ought to be done; *to require that the burden should be borne by him for whose advantage it has been assumed;*

and to secure an equality among those equally obliged and benefited, are perhaps not all the familiar adages which could legitimately be assigned in support of it. It is in fact a natural and necessary equity which flows from the relation of the parties, and though not the result of contract, is, nevertheless, the execution of their intentions."

IV.

BROWN'S LIABILITY ON THE JANUARY CONTRACT.

The January contract to pay the mortgages still binds Mr. Brown, because the March contract, which was proposed as a partial substitute for the January contract, never received the assent of Mrs. Brown, who was a necessary party.

(1.) The March contract which was proposed as a partial substitute for the January contract was in its nature entire.

2 Parsons on Contracts (5th Ed.), 517.
Mechem on Agency, § 634.

Parsons on Contracts, says:

"Like most other questions of construction it [whether a contract is entire] depends upon the intention of the parties, and this must be discovered in each case by considering the language employed and the subject-matter of the contract."

(2.) An essential part of the March contract was the substitution for Mr. Brown of Mrs. Brown as debtor for the two mortgages; such a substitution is a novation.

16 Am. & E. Ency., 862, 864, 867, 876.
2 Chitty on Contracts, Ch. 7, § 3.
1 Parsons on Contracts, Ch. 13.
Caswell v. *Fellows*, 110 Mass., 52.

The deeds made by Meserve and the bond made by Brown, show that it was a part of the March contract that Mrs. Brown should assume the mortgages.

(3.) To such a contract of novation the assent of each of the three parties to it is necessary.

16 Am. & E. Ency., 867.
2 Wharton on Contracts, § 855.
1 Parsons on Contracts, Ch. 13.

In the American and English Encyclopædia it is said:

"All the parties, not only to the new contract, but also to the one for which the new contract is substituted, must consent to the novation; the parties to the original contract must consent in order to have that extinguished, and the parties to the new contract in order to have a valid obligation substituted for the old."

Wharton says:

"It stands to reason that the substitution of a new contract in the place of the old requires the assent of all the parties to the old contract, and of all the parties to the new contract. Unless all the parties to the old contract consent it cannot be rescinded; unless all the parties to the new contract consent it cannot be created."

Parsons says:

"The mutual assent of all the three parties seems to be necessary to make it an effectual novation or substitution."

As Mrs. Brown repudiated the proposed substitute there was no novation, and as the novation was an essential part of the March contract, that contract never received the assent necessary to make it operative, and, therefore, it effected no change in the January contract.

V.

BROWN'S LIABILITY FOR THE MORTGAGES UNDER THE MARCH CONTRACT.

(1.) Unless the deeds made by Meserve are wholly inoperative, because parts of an entire contract which never went into effect, under them the title, legal or equitable, to the mortgaged property passed to Mr. Brown, and he is liable for the mortgages as principal debtor, according to the maxim that "*the burden should be borne by him for whose advantage it has been assumed.*"

(*a*) Though by the disclaimer of Mrs. Brown, who, it is admitted, was a dry trustee for Mr. Brown, the deeds became in law inoperative as conveyances to her, still in equity they are operative, for "it is a rule that admits of no exception that equity never wants a trustee." "Courts of equity never allow a trust to fail for want of a trustee." Failing others, equity will hold the grantor to be a trustee.

Perry on Trusts, §§ 38, 45, 240, 259.
2 Tiffany & B. on Trusts, 2.
Vidal v. *Girard*, 2 How., 188.

Perry on Trusts says:

§ 38. "It is a rule that admits of no exception, that equity never wants a trustee, or, in other words, that if a trust is once properly created, the incompetency, disability, death or non-appointment of a trustee, shall not defeat it. Thus, if property has been bequeathed in trust, and no trustee, or a trustee disabled from taking, or one who is dead or refuses to take is appointed, the court will decree the execution of the trust by the personal representative, if it is personal property, and by the heirs or devisees if it is real estate."

§ 45. "Where a trustee gave land to a corporation that could not take by reason of the statute of mortmain, in trust to sell and

apply the proceeds to persons competent to take, it was held, though the devise was void at law, yet in equity it was a valid trust, and that the heir was a trustee to the uses declared in the will."

Citing *Winslow* v. *Cummings*, 3 Cush., 358.

§ 45. "A corporation cannot be compelled to execute a trust in property the legal title to which it has no power to take and hold; but the trust, if otherwise valid, is not for that reason void, and the court will appoint a competent trustee and direct the conveyance of the property to him."

Citing *Vidal* v. *Girard*, 2 How., 188.

§ 240. "Where a trust is created, but if no trustee is appointed, or the trustee named is incapable of taking, or refuses to act, or dies, or the office becomes vacant in any other way, in all such cases every person to whom the trust property comes by reason of there being no trustee will be treated as a trustee. * * * Courts of equity have inherent jurisdiction over all matters of trusts and trustees, and they never allow a trust to fail for want of a trustee. So, if a party forbidden by law to convey his property to some person standing in a certain relation to him, as if a husband who can not convey to his wife should make an absolute conveyance directly to her, the conveyance would not pass the legal title, but equity would construe it into a declaration of trust and the husband into a trustee for the wife."

§ 259. "Such refusal [of a trustee] does not invalidate the deed or will; it only relieves the trustees and enables the court to appoint others."

(*b.*) If the deeds operated as a conveyance in law to Mrs. Brown, then, because she was a dry trustee for Mr. Brown, the legal title vested in him under the Statute of Uses.

Perry on Trusts, § 299 and notes.

(*c.*) In either case (*a*) or (*b*), Mr. Brown is the beneficial grantee of the mortgaged property, and must save his trustee harmless from the obligation to pay the mortgages which the trustee assumed for his advantage and at his request. As between Brown and his trustee, Brown

is the principal debtor for the mortgages and his trustee is only a surety.

Lee v. *Rook*, Mos., 318.

In that case SIR JOSEPH JEKYLL says:

"If I borrow money on a mortgage of my estate for another, I may come into equity (as every surety may against his principal) to have my estate disencumbered by him; and the covenant in the mortgage deed to pay the money will bind the principal, for, the money being borrowed for him, it is his debt, and the surety is only a nominal person."

(2.) Unless the deeds made by Meserve are nullities, because parts of an entire contract which never went into effect, there is also another reason why Brown is liable for the mortgages. By assuming to act for Mrs. Brown he virtually represented that he had authority to do so, when he knew he had no such authority, and so made himself liable.

Mechem on Agency, § 544.
Story on Agency, § 264.

MECHEM, § 544:

" Where an agent who knows that he has no authority, although he makes no express representation as to it, yet deals with the other party as one possessing competent authority, and does not disclose his lack of it, whereby the other party suffers injury, the agent will be liable for the injury so occasioned. * * * For the agent induces the other party to enter into the contract on what amounts to a misrepresentation of a fact peculiarly within his own knowledge, and it is but just that he who does so should be considered as holding himself out as one having competent authority, and as insuring the other party against the consequences arising from want of such authority."

STORY says:

" And in the first place, it may be stated, that wherever a party undertakes to do any act, as the agent of another, if he does not

possess any authority from the principal therefor, or if he exceeds the authority delegated to him, he will [in some form of action] be personally responsible therefor to the person with whom he is dealing for or on account of his principal [both for the amount of the contract, and for the costs incurred, if any, by the other party in the fruitless suit against the supposed principal]. There can be no doubt that this is, and ought to be, the rule of law in the case of a fraudulent representation made by the agent, that he has due authority to act for the principal; for it is an intentional deceit. The same rule may justly apply, where the agent has no authority and he knows it, and he nevertheless undertakes to act for the principal, *although he intends no fraud.*"

(*a.*) In the law courts there have been much discussion and some conflicting decisions as to the right form of the action to enforce this obligation of the agent to make good the contract which he wrongfully made in the name of the principal, whether the action shall be (1) in assumpsit on the contract itself, (2) in assumpsit on the implied warrant of agency, or (3) in an action on the case for the actual or legal fraud in assuming to act as the agent.

Mechem on Agency, §§ 549, 550.

(*b.*) In the equity courts, however, such questions of form can not arise, and there is no doubt that these courts have jurisdiction incidentally to decree compensation or damages.

Story's Eq. Jr., §§ 794, 796, 799.
Pratt v. *Law*, 9 Cranch, 492, 494.

(*c.*) The measure of damages recoverable from the agent is the sum which might have been recovered from the principal if he had been bound.

Sumner v. *Williams*, 8 Mass., 162, 213.
Feeter v. *Heath*, 11 Wend., 478, 485.

(*d.*) This liability of the agent is the substitute given

by the law for the liability of the principal. A decree recovered against the pretended agent is in legal effect as much the proceeds of the contract made by the agent as would be a decree against the principal. In this case, the liability or obligation of Mr. Brown is, in Meserve's hands, just as much a security against the mortgages as would have been the liability or obligation of Mrs. Brown, and it should be, in a court of equity, applied in the same way.

The case, therefore, stands as if Mr. Brown had himself received a deed by which he in terms agreed to pay the mortgages, for in every view of the case he is still the principal debtor.

VI.

QUESTIONS ON ACCOUNTING.

(1.) In stating an account where there are mutual credits they are treated as offset at the times they become due respectively.

Waterman on Set-off (2 Ed.) §663.
Tucker v. *Jewett*, 32 Conn., 564.

(2.) A surety (Brown) having paid the debt, is entitled to recover from his principal (Meserve) only indemnity; if the debt was compromised, only the amount paid and interest; if paid in depreciated currency or in property, only the actual value thereof and interest.

Daniels Neg. Instrs. §1342.
24 Am. & E. Encyc., 784–5.

DANIELS says:

"A surety who pays a bill or note, or other obligation of his principal is entitled to indemnity from him, and may recover back the amount with legal interest thereon. But the limit of the sure-

ty's recovery is simply the amount necessary to indemnify him, and therefore, even though he take an assignment of the creditor's claim, he cannot recover the amount that the creditor was entitled to recover, but only the amount which he paid. If he compromises the debt, he can only recover back the amount accepted by the creditor in compromise of it, and if he pays in a depreciated currency he cannot recover a dollar in legal tender for every dollar of such currency, but only the value of the currency paid."

(3.) The foreclosures by sale were regular under the decisions in Massachusetts.

Hall v. *Bliss*, 118 Mass., 554.
Hood v. *Adams*, 124 Mass., 481.

And the entries were made expressly "declaring at the same time and place, that said entry was made not waiving the benefit of the foreclosure sale already made under the power in said mortgage, but to confirm the same." So that the value of the property is not an element in the accounting.

VII.

LIABILITY ON THE BOND.

Unless the bond, also, is a nullity because a part of an entire contract which never went into effect, the extent of Brown's liability on the bond is to be determined.

(1.) There is "a well settled distinction between an agreement to indemnify and an agreement to pay."

Wicker v. *Hoppock*, 73 U. S., 94.
Mills v. *Dow*, 133 U. S., 423, 432.
Johnson v. *Rick*, 137 U. S., 300, 308.
Lock v. *Homer*, 131 Mass., 93.

(2.) In the deeds the provision "subject to a mortgage * * * which mortgage with all interest thereon

the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom" contains two independent stipulations, one to pay the mortgages, and the other to indemnify against the mortgages.

Wicker v. *Hoppock*, 73 U. S., 94.
Farnsworth v. *Boardman*, 131 Mass., 115, 121.
Lock v. *Homer*, 131 Mass., 93.

(3.) The agreement to indemnify does not impair the agreement to pay.

Wicker v. *Hoppock*, 73 U. S. 94, 100.
Farnsworth v. *Boardman*, 131 Mass., 115, 121.

(4.) The agreement to indemnify enlarges the liability and includes not only the mortgages but all costs and damages.

Farnsworth v. *Boardman*, 131 Mass., 115, 121.

(5.) Under the agreement to pay, after the mortgages had become due and had not been paid, a right of action at once accrued to the grantor (Meserve) to recover as damages the amount of the mortgages so remaining unpaid.

Wicker v. *Hoppock*, 73 U. S., 94, 99.
Lock v. *Homer*, 131 Mass., 93, 108-9.

(6.) Mere liability for an overdue debt is an injury which entitles a surety to maintain a bill against his principal for release therefrom.

(7.) The condition of the bond is, "if the said Lucy T. Brown shall perform the obligations of said deeds

as herein expressed and save the said Meserve harmless, then this obligation shall be void, otherwise it shall be and remain in full force and virtue, only to the extent, however, that the said Meserve suffers harm." The obligations of the deeds as therein expressed are a subject to a mortgage * * * which mortgage, with all interest thereon, the said Lucy T. Brown hereby assumes and agrees to pay and to protect and save harmless said grantor therefrom." If the obligations of the deeds be inserted in the condition of the bond, this condition becomes: If the said Lucy T. Brown shall pay the said mortgages and save harmless the said Meserve therefrom, then this obligation shall be void, otherwise it shall be and remain in full force "*only to the extent, however, that the said Meserve suffers harm.*" If the clause in italics is omitted there can be no question as to the meaning of the condition. The bond is binding (1) unless the mortgages are paid, and (2) unless Meserve is saved harmless. The addition of the clause in italics, appellees claim, nullifies the first condition, which is, "unless the mortgages are paid." The appellants deny this, because:

(*a*) The clause in italics is mere surplusage. It adds nothing to the legal effect of the bond. On all penal bonds a recovery can be had *only to the extent the obligee suffers harm*, though in each case the measure or extent of the harm or damage must be determined from the nature of the condition. If that clause were not expressed in this bond no one could reasonably doubt that a recovery could be had on the bond as soon as the mortgages were overdue. This being true, a recovery can still be had on the same facts. The expression of what the law would imply does not change the legal effect of a con-

tract, for "What is implied in a statute, pleading, contract or will, is as much a part of it as what is expressed."

U. S. v. *Babbit*, 66 U. S., 55.

(*b*) Every stipulation should be given effect when it can be done consistently. In this clause the word "harm" is a general term to be construed in connection with the stipulation to pay the mortgages, and it is broad enough to include the legal injury or harm—liability for the mortgages—guarded against by that stipulation. The rules of construction applied to other contracts, apply to contracts of indemnity.

Belloni v. *Freeborn*, 63 N. Y., 387.

(*c*) An exception should not be construed so as to make it "co-extensive with the provision from which it forms the exception" or so as to nullify that provision.

Sutherland on Statutes, §§ 219, 223.

The bond, therefore, is not a mere bond of indemnity within the ordinary meaning of that term, and a recovery could be had *even in a court of law* without showing that the obligee (Meserve) paid anything on the mortgages.

(8.) The appellees claim that though Brown still remained the purchaser of the property, Brown's liability on the bond was substituted for his liability on the January contract. In this view, therefore, Brown, to the extent of the bond, remains principal debtor for the mortgages and Meserve is only surety. In this view the bond is in legal effect a bond of indemnity from a principal to a surety. On such a bond "it is well settled that as soon as the surety's obligation to pay becomes absolute he is

entitled *in equity* to require the principal debtor to exonerate him, and he may at once file a bill to compel an exoneration, although the creditor has not demanded payment of him."

Ardesco Co. v. *N. A. Co.*, 66 Pa. St., 375, 381.
Story's Eq. Jr., §§ 327, 849.
24 Am. & E. Ency., 789 and citations.
Beaver v. *Beaver*, 23 Pa. St., 169, 170.

(9.) In every bond for indemnity against a debt, from the very nature of the transaction, as to that debt, the obligee is surety and the obligor is principal, and so it is settled that a bill may be maintained by the obligee for his exoneration.

Story's Eq. Jr. § 850.
Champion v. *Brown*, 6 John's Chy., 406.

And it makes no difference that the obligee is insolvent "it being unreasonable that a surety should always have such a cloud hanging over him."

See *Champion* v. *Brown*, 6 John's Chy., 405 and citations.

The extent of Brown's liability on the bond, therefore, both at law and in equity is the full amount of the bond, notwithstanding Meserve has paid nothing on the mortgages.

VIII.

Brown cannot, under the facts in this case, offset against the liability on the bond anything paid by him on the mortgages assumed by Meserve.

A person may by contract express or implied deprive himself of the right to set-off.

Ardesco Co. v. *N. A. Co.*, 66 Pa. St., 379.

In this case the mortgages assumed by Meserve were set off when the amount of the bond was fixed at $10,000.

Respectfully submitted.

GEORGE BURRY,

Solicitor for Appellants.

CHICAGO, March, 1895.

158, 222

158-222

(14,779.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 250.

Episcopal City Mission and George W. Meserve, *Appellants,* vs. **Lucy T. Brown and John B. Brown,** *Appellees.*	Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEES.

CHARLES M. OSBORN,
SAMUEL A. LYNDE,
SOLICITORS FOR APPELLEES.

THE GUNTHORP-WARREN PRINTING COMPANY, 83 DEARBORN ST., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 250.

Episcopal City Mission and George W. Meserve,
Appellants,

vs.

Lucy T. Brown and John B. Brown,
Appellees.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

While the material facts in this case are practically uncontroverted, we cannot accept the statement of counsel for the appellants, because it is largely given to his argument and the statement of his inferences from the facts, and especially because it omits what we consider the controlling fact in the case, viz: The fact that Meserve, knowing Mrs. Brown to be, as he expresses it, a "straw "grantee," required Brown to give him the bond of indemnity as a substitute for, and in the place of, his assuming and agreeing to pay these mortgages, and that the bond was exacted and taken for the express purpose of taking the place of an assumption of the mortgages by

Brown. While it states the making of the bond, it fails to state the purpose for which the bond was given and accepted as shown by the testimony of both Meserve and Brown.

The suit was brought by the Episcopal City Mission, the mortgagee in these mortgages. It joined Meserve, the mortgagor, with it as co-complainant, making use in that regard of the authority conferred on it by Meserve under the assignment of any right or claim on his part against the Browns, which it procured from him February 3, 1886 (Complts. Ex. 34, Rec., 196), and under the assignment of Brown's bond, which he made to it March 19, 1877 (Complts., Ex., 35; Rec., 197), about the time that the bond was given. The Mission, however, is the active party in the prosecution of the suit, and Meserve a mere nominal party. The relief sought by the Mission is to be subrogated to his rights, and the case turns entirely on the question as to what, if any, equity or right exists, under the facts appearing on the record, in his favor, against John B. Brown or Lucy T. Brown, and as to whether he has any right or equity against either of them to which the morgagee can be subrogated.

The original bill, filed December 3, 1886 (Rec., 3 to 7), sought a subrogation to Meserve's rights against Mrs. Brown under the conditions of the deeds from Meserve to her, and to his rights against Brown under the indemnity bond.

Mrs. Brown in her answer to the original bill (Rec., 24–28) denied any liability on her part to Meserve to pay the balance due on these mortgages, alleging that she never knew of or consented to the making of the deeds to her, and that she never assumed or agreed to pay the mortgages.

Brown in his answer (Rec., 32–36) alleged that he and Meserve made the contract of January, 1877, (in fact, a contract for exchange of properties), that, when they came to execute the contract, he requested Meserve to make his deeds to Mrs. Brown, and that Meserve consented to do so, but required him to give his bond for $10,000, "in order that as Meserve had by said contract "agreed to assume and pay the mortgages on the Illinois "lands, and this defendant the mortgages on the Boston "lands, and by making the conveyances to said Lucy T. "Brown in the manner aforesaid, said Meserve might "sustain loss by being compelled to pay the mortgages "on the Illinois property, and also the said mortgages on "the said two lots, he might be secured from suffering "loss in the transaction," but only to the extent that Meserve should suffer harm.

In May, 1890, more than three years after the filing of these answers, after the hearing in the Circuit Court, and under leave given to the complainants at the time of the hearing (Rec., 324), they filed an amended bill (Rec., 325–333). This amended bill alleges the making of the contract of January, 1877, between Meserve and Brown for the exchange of properties, in substance in the form in which it had been stated by the defendant Brown in his answer to the original bill. It states the making of the two mortgage deeds by Meserve to the Mission under date of March 1, 1877, and the making of the two deeds bearing the same date by Meserve to Lucy T. Brown, which it is stated had been so made, "at the instance "and request of the said John B. Brown," and which deeds are stated to be subject to the two mortgages, and by which Lucy T. Brown was made to assume and agree to pay the two mortgages. It states

that at the time of the execution of these two deeds Brown executed to Meserve his bond, and sets out *verbatim* the condition thereof. It states the default in the payment of the mortgage indebtedness and the foreclosure of the mortgages by the City Mission, and the deficiency resulting therefrom in each case, and that Meserve is irresponsible financially and insolvent, and charges that the mission has frequently applied to Brown and to Mrs. Brown to pay the moneys remaining due to the mission under these mortgages, but that they have refused to do so. This constitutes the stating portion of the amended bill, and it then proceeds in the somewhat antiquated form of charging alleged pretences on the part of the defendants that the lots were sold by Meserve to Brown, and not to Mrs. Brown; that the conveyances made by Meserve to Mrs. Brown were made without her knowledge or consent and at the request of Brown and for his use; that the deeds were not known to or authorized by Mrs. Brown and never delivered to or accepted by her, and that she never agreed to assume to pay the mortgages; and that the making of the deeds to Mrs. Brown and the execution of the bond by Brown was a modification of the contract and relieved Brown from all liability for the mortgages under this contract; the contrary of which alleged pretenses is charged to be true, and charging that if the deeds to Mrs. Brown were made without her knowledge or consent and if she never authorized Brown to receive the deeds for her, Brown knowingly acted without authority and induced Meserve to make the deeds to her by falsely and fraudulently pretending that he was authorized by her to receive them.

The specific relief prayed was the same as in the original bill, namely, that an account be taken of the amounts

due to the Mission under the mortgages and that it be subrogated to all the rights of Meserve in the premises, and that Brown and Mrs. Brown, or one of them, be decreed to pay to the Mission the sum found due to it on the mortgages, closing with the general prayer for relief.

This amended bill does not state any liability on Brown's part to Meserve other than that arising under his bond, nor does it in any way present a case differing from the original bill, and it must be construed as seeking to have the mission subrogated to Meserve's rights against Mrs. Brown under the deeds to her and to his rights against Brown under the bond. While the pleader in the charging part of the amended bill charged as alleged pretenses on the part of the defendants the matters, which had been stated in the answers to the original bill more than three years before and which had been conclusively established by the evidence long prior to the filing of the amended bill, and charged the contrary to be true, and alleged that, if such were the facts, Brown had been guilty of fraud and had procured from Meserve his acceptance of the bond in the place of an assumption of the mortgages by false and fraudulent pretenses, no claim of right is based thereon, and no relief is sought by reason thereof. We shall contend, that the amended bill did not alter in any way the case attempted to be made by the original bill; that the charges of fraud asserted in the charging part of this bill were not only wholly unwarranted and unfounded in fact, but did not change in any way, or add to the claim asserted and attempted to be made in the stating part of the bill; that the prayer of the amended bill is not appropriate to any claim on the part of Meserve, based on charges of fraud against Brown, and that any such claim would be abso-

lutely inconsistent with and contradictory to the case attempted to be made and the relief sought by it; and finally that the mission cannot assert any such claim in this case, in the right of Meserve, as Meserve's remedy against Brown, were there any foundation for such charges of fraud or misrepresentation, would only be in an action on the case for damages, or in a suit in equity for rescission of the deeds and bond, to neither of which could the mission be subrogated, and neither of which could be maintained after the lapse of thirteen years.

The defendants in their separate answers to this amended bill, protested against its being filed after the hearing of the cause. Mrs. Brown's answer was in substance the same as her answer to the original bill. Brown in his answer (Rec., 337 to 342), says that the contract of January, 1877, was changed, and that instead of conveying the lots to him, Meserve conveyed them to Mrs. Brown, and in place of requiring him to assume and agree to pay the mortgages, Meserve agreed to accept from him his bond.

He says that Meserve was not misled in any way by any claim of authority on his part to act for Mrs. Brown; that he made no such claim and in no way misrepresented to Meserve that he was authorized by her to receive such deeds for her. And he denies that he in any way by false representations persuaded Meserve to consent to change the contract. He says that Meserve knew at the time when he consented to the change in the contract that Lucy T. Brown was a "straw grantee," and that the conveyances were to be made to her solely for his use; and that Meserve required the giving of the bond as a condition to consenting to the change and for releasing him from his agreement to assume and pay the mortgages. That

the amount of the bond was fixed by Meserve and it was executed and delivered to him and accepted by Meserve in place of his former agreement to assume and pay the mortgages, and therefore the contract as originally made between him and Meserve was changed and he became released from any liability to pay the mortgages and became bound only under the bond. He asserts that any claim of liability on his part to Meserve under the original agreement of January, 1877, or because of his having requested Meserve to change the contract and make the deeds to Mrs. Brown, is a stale claim which ought not to be recognized or entertained in equity; that the original contract with Meserve was made, and he was released by Meserve from any personal liability to pay the mortgages, and his bond was taken and accepted by Meserve in place thereof more than thirteen years before the bill was filed; that he had himself in his answer to the original bill stated, almost four years before the amended bill was filed, the making of the contract and the change thereof, and the execution of the bond; and that the complainants should not be heard to assert any claim of liability on his part because of the making of the agreement or change thereof; and that Meserve could not assert any such claim against him at law, nor could the mission in his right be heard to make such assertion in equity.

The argument submitted for the appellants is directed almost wholly to the contention that Brown is personally liable for the entire amount remaining due under these mortgages, notwithstanding Meserve took the bond in place of his assuming the mortgages and released him from his agreement to assume them. The appellants clearly abandoned any claim against Mrs. Brown, though the

assignment of errors in the decree (Rec., 357), which dismissed the original and amended bills for want of equity, was broad enough to include the question as to whether the bill should have been dismissed as to her. On the hearing in the Circuit Court before his Honor, Judge Blodgett, counsel, as is shown by the statement of the learned judge in his opinion (Rec., 346), conceded that no case for recovery against her had been made; and it might well be questioned whether, in view of having taken that position, any objection could be urged in this court because the Circuit Court had concurred with counsel and had acted on that admission by dismissing the bill as to Mrs. Brown. We shall therefore assume that the sole question which is presented by this appeal is as to whether on the evidence in this record the mission was entitled to any decree against Brown in Meserve's right.

The contention that Brown is personally liable for these mortgages without regard to his bond is entirely inconsistent with and contradictory to the case attempted to be made by the appellants in their bills in which, as we construe them, they assert only against Brown the claim of liability under the bond. One result of this inconsistency is manifest in the argument itself, which at one point presents the claim and contention that Brown is liable for the full amount of the deficiencies of these mortgages, based upon the theory that the bond was a nullity, and at another calls in question the ruling of the Circuit Court in the construction of the condition expressed in the bond and in its finding as to the amount which Brown was entitled to set off against his liability to Meserve under the bond by reason of Meserve's failure to pay the mortgages on the Cook County lands assumed by him, which necessarily involves the proposition that the bond is a binding obligation.

This contention is also not only inconsistent with the nature of the case sought to be made by the bills, but the various grounds which are advanced by counsel in support of it are entirely inconsistent with each other, and the argument in that respect is contradictory. Counsel asserts the following reasons why Brown should be held personally liable for the full amount due to the mission under these mortgages:

1. (Arg., p. 3.) Because the deeds were made to Mrs. Brown for his use, and as counsel contends, she would be a trustee for Brown, but not having accepted the trust the court will not allow the trust to fail for want of a trustee, but will hold Brown liable as principal to pay the mortgage indebtedness which Mrs. Brown would have assumed for his benefit if she had accepted the trust.

(Note. We shall not comment here upon the singular confusion of ideas and principles involved in this argument, but will simply call attention to the fact that whatever trust would arise because of these deeds having been made to Mrs. Brown for Brown's use would be between them, and with that neither the mortgagee nor Meserve has any concern. The argument also involves the proposition that the deeds became and were operative, in which case, as they were given simultaneously with the bond, Brown's obligation can only arise under the bond, and there could be no claim of liability on his part as a beneficiary of the grantee in the deeds, as the bond was given by him and accepted by Meserve for the express purpose of taking the place of any assumption by him of the mortgages.)

2. The next proposition presented, (Arg., 4, 5) is that the original contract of January, 1877, was never

changed in fact, because there was no consent by Mrs. Brown.

Counsel treats the transaction between Meserve and Brown in March as an attempted novation, to which Mrs. Brown's consent was an essential element; and he argues that therefore Brown remained liable to Meserve under the agreement of January. This contention necessarily involves the proposition that the deeds to Mrs. Brown and the bond given by Brown were absolutely null and void, which is a clear contradiction of the case attempted to be made by the bills and in direct conflict with the balance of the argument.

3. The final proposition asserted in this regard is that Brown made himself personally liable for these mortgages by assuming to act for Mrs. Brown without authority to do so, which, also, involves the proposition that the bond is a nullity.

We insist that these contentions are not only inconsistent with and contradictory to the appellant's pleadings and wholly outside of the case attempted to be made by their bills, but are directly contrary to the evidence. The evidence shows conclusively that the contract of January, 1877, was changed by Meserve and Brown, and that Meserve, as a condition for making the change, required Brown to give his bond, and that the bond was taken in the place of Brown's assuming the mortgages. There was no misrepresentation on Brown's part or misunderstanding by Meserve. He understood that Mrs. Brown was merely a "straw grantee"; that the deeds were made to her for Brown's use, and the bond was exacted by him and given by Brown and its amount fixed for that very reason and for the purpose of protecting Meserve from loss because of Brown's not assuming the

mortgages. We will state fully the testimony of Brown and Meserve in reference to these transactions, which constitutes the entire evidence on this record in reference to it.

Brown testifies (Rec., 217) as to the substance of his original contract with Meserve, which was, in substance, for an exchange of lands in Cook County, Illinois, for the Purchase street lots, each party to assume the mortgages on the other's property (Rec., 218); that the deeds were prepared, and he requested him (Meserve) to make the deeds of the stores to Mrs. Brown.

He says:

"There was some discussion on the matter, he raising "the point that his contract was with me; that I had "agreed to assume and pay the mortgages on the stores; "that there might be an objection to his making the "deed to Mrs. Brown, as he did not know her or any- "thing of her, and she was a stranger to this "contract, and I agreed with him to give him "my bond, which should make my responsibility "upon the contract, instead of the assumption "in the deed." Being asked on what basis the bond was to be made, he says: "By the contract I had agreed to "assume the mortgages on these stores to the amount of "$19,500 each, and the objection was made that if the "property was deeded to Mrs. Brown, I should not be "carrying out my contract, as he had no knowledge of "her, and, therefore, required the bond. I recognized "the claim and agreed to give my bond to meet that re- "sponsibility. * * * The bond was for $5,000; at "least that was our first agreement. I felt, too, that was "ample to secure against any loss on the property, * * * "*but, later, Meserve raised the question, that as this bond*

"was to stand in lieu of the obligation in the deed, it "should be made $10,000. This was agreed to and a "bond for that amount given."

Meserve's testimony fully corroborates Brown in every particular. He says (Rec., 301), that just prior to the conveyance he was requested to make the deeds to Mrs. Brown; that he did not know there was such a person; that she was not there and he did not see her, and has never known her, and has "sometimes doubted whether "there is such a woman"; (Rec., 302) that "it was "agreed between us, that he should give a bond to hold "me harmless against the notes secured by the mort- "gage"; that the only reason stated for making the bond was "that he was responsible for the liability on the "mortgage"; that he had supposed $5,000 to be the amount of the bond. He says (Rec., 305), that the bond was fixed at $10,000, "to make Mr. Brown's liability "equal to my own. I had assumed about $10,000 in "Chicago. My feeling was that he had assumed $39,- "000 here, and there could not possibly be a loss to that "extent, if any. I did not feel that there would be any. "I recollect it now as a sort of balance between us in our "liabilities. * * * I knew my mortgages to be well "secured—mercantile property, that could not depreciate "to any great extent; his was secured by vacant land."

He was asked the question: "Why did you take any "bond at all, then?" To which he answers: "Because "I was deeding to a straw grantee, to somebody that I "did not know;" and that the reason for not putting in the bond the whole amount of the difference between the two sets of mortgages was "because I knew there could "be no possible way of making my security worthless by "any handling it in three years; there could be no way,

"the property was insured, and the land was there, which "had cost almost the amount of the notes. Had the "buildings burned, the land, with $10,000, would have "been security for my note." On cross-examination he says again (Rec., 314): "The bond was given to hold "me harmless against loss or damage on the notes."

This evidence, we submit, clearly shows that as respects Brown's original agreement to assume and pay these mortgages, it was rescinded by the parties, and the bond was given and received in its place, and that the express purpose, for which this bond was required by Meserve and given by Brown was to take the place of the original agreement by Brown to assume and pay these mortgages. It shows, that the amount of the bond was fixed by Meserve at a sum, which in his judgment he considered would suffice with the value of the property in any event, as he supposed, to cover the mortgages in full, and indemnify him against any possible loss by reason of his liability under them.

Meserve does, it is true, at one point speak of the bond as fixed at $10,000 to balance liabilities between him and Brown; but it is perfectly clear, that his reason for requiring the bond (he says) was because he was deeding to a "straw grantee," and that the bond was given and accepted, and the amount determined, solely in order that it should protect Meserve against loss or damages on the notes.

This evidence, we think, effectual disposes of any claim of liability on Brown's part, except under the bond. Having consented to change the original agreement, and having accepted the bond in place of Brown's agreement to assume the mortgages, and having deeded to Mrs. Brown, as a "straw grantee," Meserve cannot, nor can

the Mission in his right, claim that the original agreement by which Brown was to assume and pay these mortgages is in force, and can be enforced against him, or that he became liable to pay the mortgages, because the deeds to Mrs. Brown were for his use. The original agreement was rescinded in that particular, and the bond given in its place; the substituted contract of March, 1877, was executed by the parties, and the bond accepted, nearly ten years before this suit was brought.

There can exist no claim under the original agreement, for that was changed in this respect by the agreement of the parties; and, if counsel's argument were sound, not only the deeds to Mrs. Brown but the bond must be treated as nullities, and the acts of the parties in attempted execution of the substituted contract held to have failed of effect, and the entire transaction a nullity.

This evidence, also, disposes of any charges or suggestions of fraud or misrepresentation on Brown's part.

We do not question Brown's liability under the bond. That liability he has admitted. We contend, that the bond is not a nullity, and admit the liability under it to the extent that Meserve has suffered harm. But an offset is claimed against any sum that Meserve might be entitled to recover from him under the bond, for the amounts which Brown was obliged to pay on the mortgages on the Cook County lands, which Meserve assumed under the deed to him, and failed to pay. Brown also alleged in his answer, that Meserve had not suffered harm by reason of the non-payment of the mortgages on the Purchase street lots, and therefore that he was not liable at all under the bond. The bond provided, that it should only be in force "to the extent that Meserve suffers harm." Both the original and amended bills allege that

Meserve is "utterly irresponsible, financially, and insolvent" (Rec., 5, 330), and Meserve's testimony shows (Rec., 306, 307, 310) that he had never paid anything on these mortgages; and that though a suit seems to have been commenced against him some years before his testimony was taken, it had not been prosecuted, and that it was his understanding with the attorneys of the mission, that they would not proceed against him, in consideration of his making the assignment to the mission of his claims against Brown and Mrs. Brown, under which his name was used in the bringing of this suit.

We should state that Meserve is contradicted on this last point by the attorneys of the mission, Mr. Balch and Mr. Rackemann, and waiving the question as to his accuracy in that regard, it is difficult to see, how in view of the express averments of the original and amended bills, and of his testimony, Meserve can be said to have suffered harm so as to vest in him any right of action against Brown under the bond.

As to the claim of offset, in case of there being any liability under the bond, Meserve admitted that he paid nothing on the Cook County mortgages (Rec., 306), and the evidence showed that Brown was obliged to take up and settle them. The account stated by him in 1888 (Rec., 279) showed the sum of $9,479.95 claimed to be due to him from Meserve on payments made by him, with interest. The Circuit Court found that the offset amounted to $9,122.63, and as some question is made by counsel as to the interest allowed on Brown's payments (in his argument, but not in his assignment of errors), it may not be improper for us to state, that we understand that the amount found by the court, as stated in the opinion, allows interest at six per cent., though the record does not show

what the computation was by which the sum of $9,122.63 was arrived at.

The cause was heard in the Circuit Court before his Honor, Judge Blodgett. His opinion appears in the record, pages 343 to 352, and is a very full and careful review of the evidence and the questions argued before him. The learned judge, after stating the facts shown by the evidence, states (Rec., 346) that as to Mrs. Brown the counsel for the mission conceded that no case was made for a recovery against her, with which view he concurs. He states the contention of the mission, that Brown was liable for the full amount of the deficiencies, because he fraudulently used his wife's name as grantor without her authority and thereby made himself liable for the amount of the indebtedness which he caused Mrs. Brown to assume, and referring to the testimony of Brown and Meserve, which we have already cited, finds that the evidence shows conclusively "that "Meserve consented to the substitution of Mrs. Brown "as grantee without any regard to her responsibility "upon the assumption clauses in the deeds, relying wholly "upon the indemnity bond of Mr. Brown to secure him "against loss as the mortgagor.

"* * * There is no proof that there was any fraud "or false statement made by Brown to Meserve to induce "him to make the deeds to Mrs. Brown, no statement to "the effect that Mrs. Brown had consented to take the "title and assume the mortgage indebtedness, or that he "as her agent had authority to bind her in anyway in the "assumption of the mortgage indebtedness. Meserve "only insisted upon the $10,000 individual bond of Brown "to protect him against the mortgages which he had "given to the mission and which by the terms of the

"deeds Mrs. Brown had assumed. Meserve was not im-
"posed upon by any statement, express or implied, that
"Mrs. Brown was or was not a consenting party to the
"transaction; but Meserve, upon Brown's agreeing to
"give the bond, consented to the substitution of Mrs.
"Brown as the grantee, relying solely upon Brown's
"bond, knowing, as he says in his testimony, that he
"was deeding to a 'straw grantee.' I see no reason why
"these parties had not an unquestionable right to make
"this substitution, and if Meserve consented to it, it is
"binding on him and all claiming under him."

The learned judge holds that no case of imposition on Meserve was made out which would entitle him or the mission in his right to invoke the principle that where an agent pretends to act for a principal without authority, even without fraud, he is himself liable as principal; as there is no proof that Brown pretended to have any authority to act for Mrs. Brown in the matter.

That both by reason of the assignment of the indemnity bond which Meserve made to the mission, and under the rule stated in the case of *Keller* v. *Ashford*, 133 U. S., 610, the mission is entitled to enforce whatever rights Meserve had under the bond against Brown, and that Brown could set-off against any liability on his part under the bond any payments which he had been compelled to make upon the mortgages on the Cook County property which Meserve assumed and had failed to pay and which Brown had paid or remained liable for. The amount of set-off to which Brown was entitled, the court found to be $9,122.63. But that Meserve would not have any right against Brown under this bond, as by the express terms of the bond he was only to be liable to the extent that Meserve sustained harm, and so far as the

proof showed, Meserve had not sustained any harm and had not paid a penny on the mortgage indebtedness, and therefore had no right against Brown under the bond.

It will be noted that although the amended bill in this case was not, in fact, filed until after the hearing, nevertheless, as is apparent from the opinion, this bill was before the court at the time of the decision of the case, and most, if not all, of the questions which are argued in the argument for appellants, were argued on the hearing in the Circuit Court.

We think that Judge Blodgett's opinion requires no argument on our part to support it, and we shall confine our argument substantially to points raised by counsel for the appellants.

ARGUMENT.

Before considering the argument submitted by counsel for appellants in support of the contention that Brown should be held liable for the full amount of these deficiencies, without regard to his bond, we wish to briefly state the grounds upon which we insist that the decree of the circuit court should be affirmed.

I.

The relief sought by the appellants' original and amended bills is to have the mission, as mortgagee, subrogated to Meserve's rights as mortgagor against Mrs. Brown, under the deeds to her, and against Brown, under the bond.

There is hardly any question upon which there has been a greater variety of opinion than that which relates to the nature and extent of the mortgagee's right to enforce the agreement of a purchaser to assume and pay the mortgage; but the rule of this court, as stated in the cases of *Keller* v. *Ashford*, 133 U. S., 610, and *Willard* v. *Wood*, 135 U. S., 309, is that the contract of the purchaser to pay the mortgage creates no direct obligation to the mortgagee, but makes the purchaser the principal debtor and the mortgagor a surety as between them; and the mortgagee, as creditor of the mortgagor as surety, is entitled in equity to have the benefit of the obligation or security held by the mortgagor, and to be substituted in the place of the mortgagor to enforce it against the purchaser. The right of the mortgagee to enforce the obli-

gation against the purchaser exists solely in the right and equity of the mortgagor. This is, also, the rule of law in Massachussetts, the place of the contract here, and the original and amended bills are drawn in conformity with it. The question presented by them was, therefore, as to what, if any, right Meserve had against Mrs. Brown to enforce the obligation attempted to be created by the covenants of the deeds to her, and as to what, if any, right Meserve had against Brown to enforce the obligation of his bond.

a. The appellants have, both by their concessions on the hearing in the Circuit Court and their argument in this case, abandoned all claim against Mrs. Brown.

The amended bill does not, we submit, change in any particular the nature or scope of the original bill; and although the principal questions which have been argued by counsel for the appellants have related to the contention that Brown is liable for the entire amount of the deficiencies remaining due on these mortgages, without respect to his lialility on his bond, we insist that no such claim or contention is in any manner presented by the amended bill, and that it is wholly outside of the case sought to be made by the appellants' pleadings; and that the only question which can properly be considered, so far as the appellee Brown, is concerned, is as to the extent of his obligation under the bond given by him to Meserve and as to the propriety of the circuit court's ruling that under the condition of the bond, Brown is not liable at all, and that if liable, he is entitled to the set-off found by the circuit court.

We understand, both from the position taken by counsel for the appellants on the hearing in the circuit court,

and in view of the argument submitted in this court, that the appellants have abandoned all claim of right against Mrs. Brown. Certainly no claim of that character is argued or discussed by counsel in the argument in this court, and, on the contrary, the argument is chiefly based upon the proposition that the deeds from Meserve to her were not binding upon her and did not create any obligation on her part to pay the mortgages. Having conceded on the hearing in the circuit court that no case had been made for recovery against her, the appellants would be estopped from contending in this court that the circuit court had erred in acting on that admission, and that the decree was erroneous because it dismissed the bills as to her. The assignment of errors is broad enough to raise the question as to the propriety of the decree in this respect; but we are certainly entitled to assnme from the argument submitted that the appellants do not intend to raise any question of liability on her part in this court or to question the decree in so far as it dismissed the cause as to her.

b. The only claim of liability that can be asserted against Brown under the amended bill is under the bond.

The evidence, which we have already stated, shows conclusively that Meserve released Brown from his original agreement to assume these mortgages, and took the bond in place of and as a substitute for the assumption of the mortgages. There was no fraud or misrepresentation on Brown's part, or misunderstanding by Meserve in the transaction. The contract was changed by mutual agreement, and Brown's agreement to assume the mortgages canceled. The bond was given and accepted in place of the assumption of the mortgages nearly ten years before the suit was brought, and more than thirteen years be-

fore the amended bill was filed. No claim is asserted against Brown by the original bill, except under the bond; nor does the amended bill seek any other relief against him than the enforcement of the bond or make any charges or statements under which any other relief could be appropriately granted.

It was contended in the circuit court, as appears from the opinion, and the same contention lies at the basis of the argument in this court, that Meserve was induced by misrepresentation and fraud to consent to release Brown from his agreement to assume the mortgages and to accept the bond in place of that agreement; but in the first place the evidence shows that this contention is not true in fact; in the second place, it is not stated in the amended bill and made the basis for any relief; and, finally, the mortgagee, the real party complainant here, could not be subrogated to any right of action that Meserve would have against Brown, if Brown had been guilty of fraud in the transaction.

Meserve's remedy in such case would have been a personal one, to which the mortgagee would not be subrogate and which he could only have enforced by an action on the case for damages. The mortgagee could not maintain a suit in equity in Meserve's right to recover damages on the charge of fraud or misrepresentation by Brown in this transaction. Such a right of action would not be a *security* held by the mortgagor as surety, but would be a personal claim for damages because of the mortgagors' having been induced to surrender and cancel the security. Moreover, in such action Meserve could only recover the actual damages suffered by reason of the alleged misrepresentation, and certainly could not maintained such action thirteen years after his acceptance of the bond in place of the agreement.

The only other remedy which Meserve would have had against Brown, assuming that the latter had been guilty of fraud in the transaction, would have been by way of a bill in equity for a rescission of the substituted contract and a cancellation of the instruments executed and delivered under it, but a recission would not have restored the original agreement for that had been cancelled by mutual agreement, and it, also is a remedy personal to Meserve, to which the mortgagee could not be subrogated. Moreover Meserve could not, nor could the mission in his right, maintain a suit to enforce the obligation of the bond, and be heard to claim in that suit while still retaining the bond, and asserting the right to enforce it, that the agreement, by which the bond was given and accepted by Merseve, should be treated as a *nullity*, and the original agreement, in place of which the bond was given and accepted, be held to be in force.

Whether a bill on behalf of the mortgagee could be brought to have the substituted contract and the bond, given and accepted under it rescinded, and the original contract decreed to be in force and enforced against Brown for the benefit of the mortgagee, is a question that we need not in fact consider here, for it is apparent, that the amended bill in this case is not such a bill, and that no such relief could be granted under it. No such relief is sought by it, and such relief would be wholly inconsistent with the amended bill, for that clearly seeks to enforce the bond. The singular inconsistencies of the argument for appellants, which we shall discuss later, furnish sufficient illustration and proof of this fact.

c. The bond was purely a bond of indemnity and was only to be in force to the extent that Meserve suffered harm. Therefore, as Meserve has not suffered actual damage, no liability has arisen under the bond.

The Circuit Court held that it was purely an indemnity bond to be in force "only to the extent that Meserve suffers harm," and that on the evidence in this record Meserve had sustained no harm, and had not paid a penny on the mortgage indebtedness, and, therefore, would have no right of recovery against Brown upon this bond. If this construction of the bond is correct, and if it is merely an agreement to indemnify, then the ruling of the Circuit Court in this regard must be affirmed, for in that class of cases the obligee cannot recover until he has been actually damnified, and can only recover to the extent of the injury he has sustained up to the time of the institution of the suit.

Wicker v. *Hoppack*, 6 Wall., 94, 99.
Locke v. *Homer*, 131 Mass., 93.

It would be difficult to draft an obligation, intended to be purely for indemnity, and have it more completely limited in its scope to the actual damages sustained by the obligee, than is the bond given Meserve by Brown. It expressly states that it shall be in force "only to the extent, however, that the said Meserve suffers harm." It was given to indemnify Meserve against loss or damage, that he might sustain by reason of the failure of Mrs. Brown to comply with and perform the conditions of the deeds to her, and expressly limited to that purpose.

Counsel contends (Arg., 31) that this clause, which we quote, is purely surplusage, and should be disregarded, but that would be in direct conflict with the express intentions of the parties.

The authorities cited by counsel in this part of his argument, to the effect that an agreement to pay and save harmless can be enforced by the obligee immediately on

the failure of the obligor to perform and without his being in any way damnified, have no application here, because it is not an agreement to pay and save harmless, but is purely an agreement to indemnify, and the parties expressly limited the obligation of the bond to actual damages sustained by Meserve, and expressly made it a pure bond of indemnity.

It is suggested by counsel, that as the bond was given in place of Brown's original agreement to assume and pay the mortgages, he remained as between him and Meserve to the extent of the bond principal debtor for the mortgages and Meserve only a surety, and that as surety, Meserve could file a bill against Brown to compel him to exonerate him from liability, without having been compelled to pay the indebtedness. This argument confounds in a singular manner the bond with the original agreement, and ignores the fact that the bond, as it stands, was taken and accepted in place of the agreement, and the agreement was thereby canceled or rescinded in that respect by the parties, and that this bond is the act of the parties themselves, and must be taken to express their intentions as to Brown's liability under it; that his liability under it should be limited expressly to actual harm and damage sustained by Meserve.

d. Brown would be entitled to set-off against any liability under the bond, the mortgage indebtedness on the Cook County lands, with interest, which Meserve assumed, and failed to pay, and which Brown was compelled to take up. This set-off would more than satisfy any liability on the bond.

In case, however, it should be held that it was not merely a bond of indemnity, and that Meserve has the right to enforce the full penalty of the obligation because

of Mrs. Brown's failure to pay the mortgages, although he has not suffered actual harm or damage thereby, there can be no question, we submit, but that Brown is entitled to an offset against any liability under the bond to the extent of the moneys he was required to pay and became liable for on the Cook County mortgages, assumed by Meserve. The amount of this offset was found by the Circuit Court to be $9,122.63 in July, 1890, and it would now amount to considerably more than the amount of the bond.

Counsel contends that Brown is not entitled to any offset against his liability under the bond, for the reason, as asserted by counsel (Arg., 15, 34) that "the mortgages "assumed by Meserve were set-off when the amount of "the bond was fixed at $10,000." His contention is that Brown has already had the benefit of the incumbrances assumed by Meserve as a set-off, thereby reducing the amount of the bond. This contention seems to us utterly preposterous, and scarcely worthy of consideration. It seems to be evolved by a curious process of reasoning from the expression used by Meserve in speak- of the bond as a *balance* of liabilities between him and Brown. Counsel attempts to strike a balance by setting off $10,000 of the mortgages on the Purchase street lots against the mortgage indebtedness assumed by Meserve, and then lets, as he puts it, the Boston property and Brown's bond stand against the remaining $29,000, to be assumed by Mrs. Brown.

This theory is wholly without foundation on the record, and contrary to Meserve's evident intention in requiring Brown to give the bond at all, and in fixing the amount of it, viz: to have a bond, which, with the value of the Boston property, would be sufficient to save him harmles

from his liabilities under his notes and mortgages to the mission. If the parties had intended to "balance" liabilities between them in the manner suggested by counsel, they would have released Meserve from any liability on the Cook County mortgages, and have omitted the clause in the deed by which he agreed to assume and pay them, and have made the deeds to the Purchase street lots subject to a mortgage indebtedness of $29,000, instead of $39,000.

On the contrary, Meserve agreed to assume and pay the Cook County mortgages, and Brown to indemnify Meserve in the sum of $10,000. In a suit by Meserve, or in his right, against Brown to enforce the obligation of the bond, there can be, we submit, no question but that Brown in entitled to set-off against his liability under the bond Meserve's liability for failing to comply with his agreement.

Counsel also contends that Brown is not entitled to the amount of set-off found by the Circuit Court. This is claimed on the following grounds. That he should not have been allowed interest on the several items claimed by him, on the theory that the set-off should be made on the dates of his several payments; and that he should not be allowed the full amounts claimed, because in some cases he liquidated the mortgage debts by part payment in stocks and bonds, which were taken by the mortgagee at par, and because of the rate of interest which counsel assumes to have been allowed by the court.

A statement was prepared showing the off-sets claimed by Brown, with interest computed to February 20, 1888, amounting to $9,479.95. (See Rec., 279.) The Circuit Court found the amount of off-sets to which Brown was entitled in July, 1890, to be $9,122.63. The record does

not show the computation by which the court arrived at this finding.

The court held, however (Rec., 351), that Brown would be entitled to set-off against any liability under the bond, any payments with interest which he had been compelled to make, and any sums with interest for which he remained liable.

In view of counsel's argument on the point of Brown's liability under his bond, where he correctly contends that under an agreement to pay and save harmless, which was Meserve's agreement as to these Cook County mortgages (Rec., 40), the obligee can recover the full amount of the debt and interest, in case of a breach of the agreement to pay, even though he has not himself paid the debts, it would seem that the Circuit Court's ruling in this regard cannot be successfully questioned.

II.

(*a.*) The contention of the appellants, that Brown should be held liable for the full amount of these deficiencies, notwithstanding Meserve had accepted his bond in place of his agreement to assume the mortgages, and released Brown from his agreement, is wholly outside of and inconsistent with their pleadings.

We need add but little to what we have already said on this point. There is no charge or statement in the amended bill of any such liability on Brown's part, as that for which counsel now contends, and the sole ground of liability stated is the bond. The charge that if the deeds were made without the consent and knowledge of Mrs. Brown, and if she never authorized or empowered Brown to receive them for her, Brown knowingly acted

without authority, and by falsely and fraudulently pretending that he was authorized by her to receive the deeds, induced Meserve to make the deeds to her and to receive the bond instead of the agreement to assume the mortgages, is not made as a basis for any claim of liability on his part, or for any relief against him, but apparently in denial of the alleged pretenses set up in the charging part of the bill, and cannot be considered as forming a part of the stating portion of the bill.

Story Eq. Pl., § 32 *et seq.*

As Brown cannot be liable both under his bond and for the entire amount of the deficiencies, regardless of the bond, the contention that he should be held liable for the entire amount of the deficiencies is absolutely inconsistent with the amended bill, which, as we view it, states no other ground of liability against him than that arising under the bond.

(*b.*) The argument of the appellants is not only inconsistent with and contradictory to their pleadings, but is inconsistent and contradictory in itself.

It amounts to this, briefly stated: Brown should be held liable for the entire amount of the deficiencies notwithstanding Meserve accepted his bond in place of his agreement to assume the mortgages; first, because he is the beneficial grantee, or, as counsel puts it, because a court of equity will not allow a trust to fail; second, because the change in the January contract was never carried out for want of Mrs. Brown's consent, and third, because he made himself liable by pretending to act for Mrs. Brown, when he knew that he had no authority to do so; and, finally, if these propositions are not sound, that he is liable under his bond anyway. The inconsistency in this argument is apparent.

(*c*). A bill, framed on the lines of this argument, could not be maintained because of the fatal inconsistencies and contradictions involved, independently of the other objections, that would arise to such a bill, which we have already stated. It would be analagous to a bill seeking to set aside a contract as fraudulent, and at the same time asking for its specific performance, if not found fraudulent.

Shields v. *Barrow*, 17 How, 130.
Williams v. *Jackson*, 107 U. S., 478, 484.

It would necessarily have to proceed on the theory that the bond was a nullity, and at the same time ask a decree enforcing the bond, if not found to be a nullity; or for a recission of the substituted contract on charges of fraud, and for the enforcement of the bond given under that contract, if such charges were not found to be sustained. Such a bill cannot be maintained.

(*d.*) The fact, which is conclusively shown by the evidence, that Meserve and Brown, by mutual agreement, changed the original contract, and Meserve required Brown to give his bond, and received and accepted the bond from him in place of his agreement to assume these mortgages, because he was deeding to a "straw" grantee, and that the bond was intended to take the place of Brown's agreement to assume the mortgages, and the amount of it was fixed by Meserve at a sum which he thought would, together with the property, suffice to save him harmless on these mortgages, conclusively disposes of the various grounds upon which counsel contends that Brown should be held liable for these deficiencies without regard to the bond.

(*e.*) The January contract was canceled by the mutual agreement of the parties, so far as concerns

Brown's agreement to assume and pay the mortgages, and his bond was given and taken in place of that agreement.

Counsel contends that the transaction between Meserve and Brown in March, by which at Brown's request he was released from his agreement to assume these mortgages, and his bond was accepted in place of that agreement, amounted to an attempted novation of the January contract, which was never operative because Mrs. Brown never consented to it; and, therefore, he argues that the January contract still remains in force, and that under it Brown can be held liable for these deficiencies regardless of his bond. This argument is not sound for two reasons:

First. Because the transaction in March was not an attempted vovation, by which Mrs. Brown was to be substituted in Brown's place in the January contract. On the contrary, it was a new contract between Meserve and Brown. The January contract was canceled in this respect, but otherwise remained in force and a contract *between Meserve and Brown.* Mrs. Brown was not to become a party to that contract; the consideration was to be paid and was paid by Brown. If considered as a novation at all, it was the substitution by mutual consent of a new contract between Meserve and Brown for their original agreement in this respect and the substitution of Brown's bond for and in the place of his agreement to to assume the mortgages.

Second. Because the March contract has been executed, the bond given and accepted. Meserve, holding the bond, could not be heard to say, that it was a nullity. If there was any fraud practiced on him in the transaction, it would give rise to another question: but having taken the bond and the whole matter having been exe-

cuted by both parties, it cannot be ignored and treated as a nullity. The test, here, is, what right of action would Meserve have against Brown; and we submit that he could not maintain an action against him under the January contract after that was canceled by mutual agreement, but his only remedy would be at law for damages in case of misrepresentation, or in equity for a rescission of the March contract, to neither of which could the mortgagee be subrogated.

We also submit, that after a lapse of thirteen years, it would be too late to attempt to maintain either an action at law or a bill in equity.

(*f.*) The proposition, that Brown should be held liable for the entire amount of the deficiencies as beneficial grantee under the deeds, is asserted on the theory that as Mrs. Brown would have been a trustee for Brown, had she consented to receive the deeds, they will be held operative in equity, because otherwise a trust would fail for want of a trustee, and "courts of equity never allow "a trust to fail for want of a trustee."

It is difficult to believe that this proposition is asserted seriously, as the equitable rule stated can have no possible application here. Neither the mission nor Meserve could have any possible interest in the relations that might exist as to this property between Brown and Mrs. Brown. Mrs. Brown would not be in any event a trustee for either of them, and they could not apply to a court of equity for the appointment of a trustee in her place. Brown would be, on the theory stated by counsel, the only party in whose favor a trustee could be supplied, and these other parties can not claim any equity in his rights.

It is also contended in this same connection, that the legal title under these deeds vested in Brown under the statute of uses. This proposition is equally untenable. The deeds are not to her for the use of Brown, which under the statute of uses would vest title in Brown, but are to her, her heirs and assigns to their own use, etc., (Rec., 20), and the statute of uses can have no possible application.

And, finally, counsel contends, that inasmuch as between Brown and Mrs. Brown he would be the principal debtor and she the surety, and he would be bound to save her as his trustee harmless from all obligation to pay these mortgages, therefore he should be held liable for these deficiencies.

This last proposition assumes that Mrs. Brown became trustee and consented to the making of the deeds to her, and is based upon the theory (unexpressed), that the mortgagee could be subrogated to her rights against Brown. This in turn involves the theory, that there was a privity of contract between the mortgagee and her, which is distinctly denied by this court and the courts of Massachusetts.

Another curious result of this last proposition would be that it would only apply, if sound, in case Mrs. Brown had consented to the making of these deeds; and in that case Brown could only be liable on the bond. The argument, therefore, presents the mortgagee in the light of claiming to be subrogated to Meserve's rights under the bond, and to Mrs. Brown's rights under the deeds.

But, without further discussion of this point, it is sufficient to say, that Meserve released Brown from the agreement to assume these mortgages and took the bond in

place thereof. The mortgagee cannot in his right successfully contend, that Brown became liable *under the deeds.* If Meserve was wrongfully induced to make this substitution and accept the bond the question would then arise, on a proper bill, as to what his remedy may be, and what, if any, right the mortgagee may have, to enforce that remedy; but it is idle to contend that *under the deeds* any liability on Brown's part can arise.

(*g.*) The last proposition argued by counsel is that Brown became liable for the mortgages by assuming to act for Mrs. Brown knowing that he had no authority to do so.

The rule of law is cited in support this proposition that where an agent acts without authority as one possessing competent authority, whereby the other party suffers injury the agent will be liable for the injury so occasioned. We do not question the rule, but rather the attempted application of it in the present case. In the first place, as was found by the Circuit Court, this rule has no application here because there was no misrepresention on Brown's part, and Meserve was not in any way misled by Brown's action in the matter. He knew that he was deeding to a "straw grantee," and took the bond in place of the assumption of the mortgages by Brown. From his own testimony it is apparent that he did not look to or in any way consider any assumption of the mortgages by Mrs. Brown, but that the bond was given and taken to secure him from liability on these mortgages, and was thought by him to be full security, together with the value of the property against any such liability. It is impossible, therefore, we submit, to view the transaction as presenting a case of misrepresentation or fraud on Brown's part, and there can be no ground for the application of the rule of law cited by the appellants.

Another objection is that under this rule Meserve's right of action against Brown would be purely a personal one, with which the mortgagee would have no concern, and to which it could not be subrogated. It would be in the present case clearly an action on the case for damages. Meserve could not treat Brown as the principal and maintain an action against him for failure to pay these mortgages, as he had taken and now holds the bond in place of Brown's original agreement to assume the mortgages. The amended bill, however, does not assert any such claim or attempt to establish any such right on behalf of the mortgagee.

We therefore submit that the only claim which is asserted against Brown by the pleadings in this case is under the bond, and further, that the only claim which the mortgagee could assert in the right of Meserve against him, is under the bond; that under the bond no liability exists, for the reason that it is merely a bond of indemnity, and Meserve has not suffered actual damages, and that if there did exist any liability under the bond, Brown is entitled to an offset more than sufficient to meet and satisfy such liability; and that the decree of the Circuit Court should be affirmed.

Respectfully submitted.

CHARLES M. OSBORN and
SAMUEL A. LYNDE,
Counsel for the Appellees.